

Why Make Powers Of Attorney?

A mentally competent person may give a continuing Power of Attorney for the management of property to another person or persons. Such a power of attorney for the management of property states, simply, that the attorney may do anything (except make a Will) in respect of property on behalf of the person giving the power of attorney (the “donor”) that the donor could do himself or herself if capable. A Power of Attorney cannot be used to carry out any function of an office such as the duties for an Estate Trustee or a director.

If you give a Power of Attorney for the management of property without restriction, it can be exercised any time, not just if you become incapable. Such a document can be used for all types of transactions and property management, but these dealings should be to your benefit. The law authorizes the attorney to make gifts and loans on your behalf to your friends and relatives and charitable gifts subject to certain conditions. The attorney is entitled to be paid reasonable compensation from your property, for his or her work as your attorney. A Power of Attorney may be given to one person or two or more and can require multiple attorneys to act unanimously or not. A Power of Attorney may be general, as described above or specific. Whether general or specific, it may contain restrictions such as an expiry date or a provision that the power may only be used in conjunction with a certificate from a doctor attesting to the donor’s incapacity to manage property.

If You Have No Power Of Attorney

Here is what happens if you are unable to manage property but have not put a continuing Power of Attorney for the management of property in place. If you become a psychiatric patient and a psychiatrist certifies you incapable of managing your property, then a Public Guardian and Trustee, a Provincial Government Official, will step in to manage your property.

If you become incapable but there is no certification by a psychiatrist, you have lost the legal ability to give a Power of Attorney to deal with your property. Someone must have you assessed and found to be incapable thus triggering the appointment of the Public Guardian and Trustee. A friend or relative can apply to take over, but must submit a management plan and may be required to post a security bond. An alternate route is a court application to have a judge declare you incapable of managing property and appoint someone to do it for you.

To avoid the intervention of the Public Guardian and Trustee and/or court proceedings, it is important under current legislation to have a Power of Attorney for the management of property in place that names at least one attorney and an alternate.

The Public Guardian and Trustee will automatically be entitled to manage your property if you are certified as incapable, despite an existing Power of Attorney. The advantage to having given Power of Attorney will be that your attorney can apply to take over from the Public Guardian and Trustee with few formalities.

Power of Attorney for Personal Care (Living Will)

A Power of Attorney for personal care allows you to appoint someone to make decisions regarding life support, artificial feeding and other medical measures from a Catholic Perspective. This Power of Attorney allows you to give general and detailed instructions about the types of care and medical treatment you would or would not like administered.

It is general a separate document from the Power of Attorney for management or property. A different person can be chosen to deal with your finances.

In executing a Powers of Attorney and making a well planned Will, you will ensure

- The orderly administration of assets and continuing support to dependents in the event of your incapacity or death;
- Medical treatment and personal care decisions by a substitute decision maker if you are unable to make such decisions; and

The ultimate disposition of your assets in accordance with your personal wishes.