

Have You Planned for Unexpected Incapacity?

WHAT IS A POWER OF ATTORNEY?

In your daily life, you deal with a number of financial matters – managing your bank accounts, insuring your property, paying property taxes, filing annual tax returns, receiving your paycheque, pension or other forms of income, purchasing insurance, managing investments, and buying goods and services to meet your needs. You may also deal with unexpected legal matters because of a car accident or damage to your property.

But what happens if you unexpectedly become unable to manage your affairs?

Although you may name someone on your bank account as a joint holder or give someone your passwords to online accounts, this does not give that person legal authority to act on your behalf. If you have a spouse, your spouse does not automatically

have the legal right to manage your affairs just because they are your spouse or because you own assets jointly.

To ensure that the people you choose can deal with your financial and legal affairs if you are unable or incapable, we recommend that you prepare an enduring Power of Attorney (POA). A POA is a legal document which you prepare when you are fully capable - in case you need it in the future. A POA gives the people you appoint (called your attorneys) legal authority to deal with your financial and legal matters if you are no longer capable. Your attorney can act in your place if you become incapable because of physical or mental incapacity (eg. a stroke or dementia), or in the event of your prolonged absence (eg. being out of the country).

WHEN DOES THE POWER OF ATTORNEY BEGIN?

When you prepare a POA, it is valid once you sign it. Simply put, this means that if you later need it, it is already in place. Before your attorney can act on your behalf, they will need to sign the POA. You can choose whether or not your attorney will need to take any additional steps before they can use the POA to help you. For example, you may require your attorney to swear a statutory declaration stating you are no longer capable to manage your affairs. Or you may require your attorney to obtain a medical report

from your doctor confirming you are unable or incapable to manage your affairs. You may choose to have different requirements for different attorneys.

However you choose to activate your POA, it is essential that those people you choose as your attorneys are people you trust, as a POA gives them the same authority to deal with your financial and legal matters as you.

WHEN DOES THE POWER OF ATTORNEY END?

A POA is only valid while you are alive. Upon death, the POA ends and your attorney can no longer act. The executor named in your Will then deals with your financial and legal matters.

You may revoke your POA at any time as long as you are fully capable to do so. Written notice must be given to your attorneys and any financial institutions

or other organizations your attorneys may have been dealing with on your behalf.

You can prepare a POA more than once. You may choose certain people now and later decide to

WHAT DOESN'T A POWER OF ATTORNEY DEAL WITH?

A POA does not give your attorney any authority to deal with your health (medical) or personal care matters. To give authority to someone you trust to help you or act on your behalf if you are

make changes. In that case, you would revoke your POA and then prepare a new one. You must be fully capable whenever you prepare or revoke a POA.

unable or incapable of managing your health and personal care matters, you can prepare a Representation Agreement.

WHAT IS A REPRESENTATION AGREEMENT?

A Representation Agreement is a legal document which gives those persons you appoint (called your representative) legal authority to assist you or make decisions for you regarding your health care and personal care matters, if you need assistance or you are incapable of making decisions for yourself.

Health care matters include all health care and medical care related decisions, whether minor or major, including whether or not to consent to surgery, which medications to take or not take, dental and eye care, consenting or not consenting to medical procedures or tests, and making end-of-life care decisions. You can also include the authority

for your representative to be able to give, refuse or withdraw consent to life support or life-prolonging medical interventions or heroic measures.

Personal care matters include deciding where you live, what activities you take part in, who can have contact with you, your daily routine and whether you should be able to continue to have a driver's licence. Your representative can also hire health care professionals (such as a physiotherapist or a homecare nurse) to provide services to you. As well, they can access your medical and hospital records, sign documents on your behalf and act as your legal advocate.

WHO CAN BE MY ATTORNEY OR REPRESENTATIVE?

Many people name their spouse, family members or friends. Whoever you name must be 19 years or older to act on your behalf. You can name more than one person to be your attorney or representative. We recommend that in addition to your first person, you should have at least one alternate. You may

also require your attorneys or representatives to work together (ie, jointly). However, that may not be practical and this should be carefully considered. We can discuss the various options with you to help you choose what makes the most sense for you.

HOW DO YOU GIVE SOMEONE LEGAL AUTHORITY TO HELP YOU?

The only way for you to give a person legal authority to manage your financial and legal affairs, or your health care and personal care matters, is by preparing a Power of Attorney and a Representation Agreement. Otherwise, if you unexpectedly become incapable and you do not have these legal

documents in place, the only other option is for someone to make a committee application to the court to obtain a court order naming them as your committee. This is a method of last resort due to the time required, significant cost to you, and loss of your legal rights.

Preparing a Power of Attorney or a Representation Agreement while you are capable gives you control over who you wish to choose to help you. It is also an economical and timely alternative to a court application. By preparing your personal planning documents in advance, you will be assured that should you need help in the future, you have people you trust who have the legal authority to help you.

We can assist you by discussing your personal situation and requirements, providing you with information and advice, and preparing your Power of Attorney and Representation Agreement to suit your situation and personal needs, giving you peace of mind that you have a plan in place. Please get in touch with a member of our group or one of the contacts listed below.



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