

Everyday we make decisions that affect our personal health and financial wellbeing. Having the capacity to make decisions means that we are able to understand information needed to make a decision and to appreciate the consequences of making or not making a decision.

But what if you lose that capacity? Who will make decisions for you?

By making Powers of Attorney you can decide who decides. Powers of Attorney allow you to give another person or persons, known as your attorney or substitute decision maker (SDM), the power to make decisions for you.

Financial decisions such as paying your bills, managing your bank account, borrowing money and buying or selling property can be made by your SDM under a Continuing Power of Attorney for Property (CPAP). The CPAP can cover all your financial decisions or be limited to a particular asset like your bank account. Upon signing the CPAP, your attorney has the authority to make financial decisions for you unless you specify that it only comes into effect at some future date (i.e. when you are assessed to be incapable).

Alternatively a decision about your personal care, including consent or refusal of consent to treatment, care services, or moving to a long term care home, can only be made by your SDM under a Power of Attorney for Personal Care (PCAC) if you are incapable of making the personal care decision. A lack of capacity to make one personal care decision does not mean that you are incapable of making all decisions: you may be unable to decide to move into a nursing home, but once there you may still be capable of deciding who will visit you. Your SDM for personal care only has the power to make those personal care decisions that you are incapable of making.

Ontario's *Substitute Decision Act* governs both the CPAP and PAPC and sets out the duties and obligations of SDMs. Your attorney for personal care must be at least 16 years old and must make decisions in your best interest and in accordance with any prior capable wish. Attorneys for property are required to be at least 18 years of age, to keep accounts and to manage your property with the same degree of care and skill as "person of ordinary prudence" unless compensation is received. If the SDM charges a fee he or she is then expected to handle your financial affairs with the same skill as a person in the business of managing property of others.

Despite the rules governing the conduct of attorneys, appointing another person to make decisions for you is not without risk. It is important to understand the risks and benefits of making Powers of Attorney and to appreciate whether making a PAPC or CPAP is the right decision for you.

Before making Powers of Attorney you should speak to a lawyer. Powers of Attorney Information is also available at:

- (Your Legal Rights) <http://yourlegallrights.on.ca/wills-and-estates/powers-of-attorney>.
- (ACE) http://www.advocacycentreelderly.org/powers_of_attorney_-_introduction.php
- (Ministry of the Attorney General) <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.asp>.

This column is not intended to provide legal advice. It provides general legal information and is written by the staff of community legal clinics, student legal aid societies, volunteer local lawyers and Legal Aid Ontario. The law can change. You should contact a lawyer to determine your legal rights and obligations. If you are living on a low income, you may be eligible for free legal help from Legal Aid Ontario (criminal, family or immigration) or your local community legal clinic (income security programs, employment law, tenants' rights, consumer law, or human rights). You can reach Legal Aid Ontario at 1-800-668-8258 or visit them online at www.legalaid.on.ca. Contact the Community Advocacy & Legal Centre at 1-877-966-8686 for more information or visit www.communitylegalcentre.ca.

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