

Powers of Attorney

An Information Booklet

What is a Power of Attorney?

A **Power of Attorney** is a legal document that gives someone else the power to make decisions on your behalf. This person is called your “**attorney**”. A Power of Attorney is generally used if you become mentally incapable of making decisions yourself. Making a Power of Attorney is voluntary.

In Ontario there are two main types of Power of Attorney:

- a **Power of Attorney for Personal Care**, which gives someone else the power to make decisions about your health care, medical treatment, diet, housing; and
- a **Continuing Power of Attorney for Property**, which gives someone else the power to make decisions about your finances and possessions.

You can choose the same person to be your attorney for property and personal care, or you can choose a different person for each document.

Can I Choose More than One Attorney?

You can choose more than one attorney. If you choose more than one attorney, you decide whether they can make decisions separately or whether they must make all their decisions together.

What if my Attorney Dies or Cannot Act?

If you chose more than one primary attorney, generally the remaining attorney would continue to act on your behalf. You can also choose a substitute attorney who will step in if your primary attorney cannot act.



How Do I Create a Power of Attorney?

You can get help from a lawyer to prepare your Power of Attorney documents. If you are living on a low income, you may be able to get free legal help from a community legal clinic.

- To find your local community legal clinic, call Legal Aid Ontario at 1-800-668-8258 or visit their website at: www.legalaid.on.ca/en/contact.

You can also prepare your own Power of Attorney documents by using the forms published by the Office of the Public Guardian and Trustee (PGT). It is a good idea to talk to a lawyer or community legal worker before filling out these forms.

- To get the forms you can call the PGT at 1-800-366-0335 or download them from their website at: www.attorneygeneral.ius.gov.on.ca.



How Do I Know if I Can Create a Power of Attorney?

To create a **Power of Attorney for Personal Care** you must be at least 16 years old.

To create a **Continuing Power of Attorney for Property** you must be at least 18 years old.

To create either document you must **also** be **mentally capable**.

Being mentally capable of creating a Power of Attorney for Personal Care means:

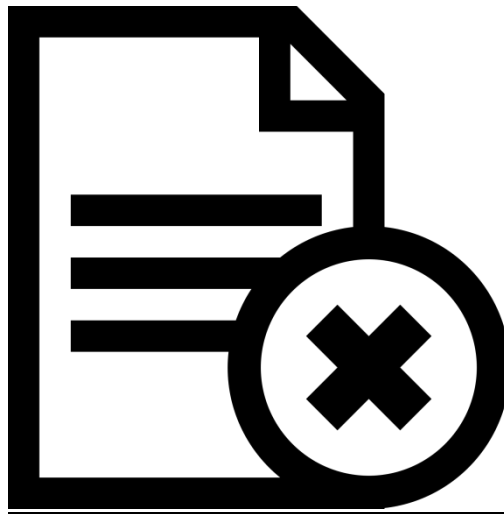
- you understand whether the person you name as your attorney is truly concerned with your well-being, and
- you understand that you may need this person to make decisions for you.

Being mentally capable of creating a Continuing Power of Attorney for Property means:

- you know what property you have and roughly how much it is worth
- you are aware of your obligations to people that financially depend on you
- you know what you are giving your attorney the power to do
- you know that your attorney is required to keep track of the decisions they make about your property
- you know that you can revoke (cancel) the Power of Attorney as long as you are mentally capable
- you understand that if your attorney does not manage your property wisely, its value could go down, and
- you understand that there is always a chance that your attorney could misuse their authority.

Can I Cancel a Power of Attorney?

Yes. If you are mentally capable of making a new Power of Attorney, you are capable of cancelling the old one. You have to cancel your Power of Attorney in writing, with the signatures of two witnesses. It is a good idea to get legal help to do this.



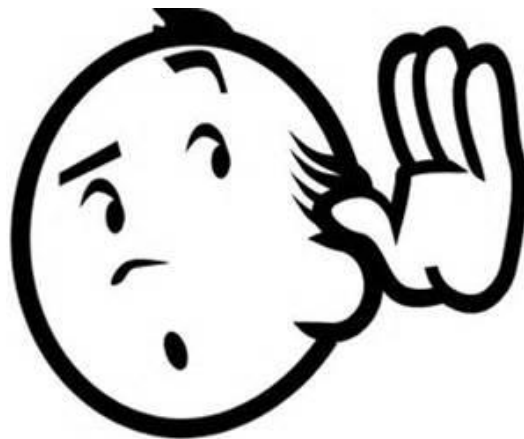
Does my Attorney Have to Follow my Past Wishes?

Your attorney always has to act in your “best interests”. They do this by considering what they know about your values, beliefs, and past wishes.

Wishes do not have to be written down – they could be things you said out loud. Your attorney must do their best to follow your past wishes. However, your attorney does not have to follow your past wishes no matter what. They might decide that in a certain case, what you wanted would have changed.

Your Attorney must also try to communicate with you even if you are mentally incapable and do their best to help you understand the decisions they are making on your behalf.

If you change your mind about any of your wishes, you should tell your attorney right away.



What is a Continuing Power of Attorney for Property?

A **Continuing Power of Attorney for Property** gives your attorney the ability to do anything with your property that you could do. For example your attorney can:

- make withdrawals from your bank, pay your bills, pay your rent, sell your personal possessions, mortgage your house, make decisions about your pets, give gifts or loans to friends or family, and make donations to charity on your behalf.

Your attorney cannot:

- make or change your will, or give a new Power of Attorney on your behalf.



Why Would I Want a Continuing Power of Attorney for Property?

A Continuing Power of Attorney for Property:

- allows **YOU** to choose a person who you **really trust** to make financial decisions for you if you become mentally incapable of doing so yourself.
- allows you to tell this person in advance that you have chosen them and explain what their responsibilities might be in the future.

If you become mentally incapable and there is no Continuing Power of Attorney for Property, the Office of the Public Guardian and Trustee (PGT) will step in to manage your property. A family member would have to apply to take the place of the PGT.

When Does a Continuing Power of Attorney for Property Become Effective?

Your attorney could start to make decisions about your property as soon as your Power of Attorney is signed and witnessed unless it says otherwise with a **condition**.

For example, a **condition** could be:

- “this is only effective once my family doctor says I am incapable”.

If you do not include a condition, it is important to pick someone who you trust to only use your Power of Attorney when they truly believe you are mentally incapable of making decisions for yourself.



Who Can I Choose as my Attorney for Property?

You can choose almost anybody as your attorney for property, but there are a few legal requirements. You **must** choose someone who:

- is at least 18 years old
- has the mental capacity to make decisions

Although not legal requirements, you **might also** want to consider choosing someone who:

- you trust, and who knows you well
- is good with finances and money
- is willing to act as your attorney and make decisions on your behalf.

What is a Power of Attorney for Personal Care?

A **Power of Attorney for Personal Care** gives your attorney the ability to make personal care decisions for you when you are mentally incapable of making them for yourself.

Personal care means decisions about:

- your health care and medical treatment,
- entering a long term care home,
- rehabilitation,
- diet, housing, clothing, hygiene, and safety.



Why Would I Want a Power of Attorney for Personal Care?

A Power of Attorney for Personal Care:

- allows **YOU** to choose a person who you **really trust** to make personal care decisions for you if you become mentally incapable of doing so yourself.
- allows you to tell this person in advance that you have chosen them and explain what their responsibilities might be in the future.

If you do not have a Power of Attorney for Personal Care, your closest family member would be asked to make personal care decisions for you. This means the responsibility of making your personal care decisions could fall into the lap of a family member who is not prepared, or who you would not want making your personal care decisions.

The Ontario government (the Office of the Public Guardian and Trustee) would be appointed to make personal care decisions for you if you do not have any family.

When Does a Power of Attorney for Personal Care Become Effective?

When your Power of Attorney for Personal Care comes into effect depends on:

- (1) the type of decision that needs to be made, and
- (2) what your Power of Attorney for Personal Care says

Personal care decisions – your attorney could start to make decisions about your personal care (diet, housing, clothing, hygiene, safety) as soon as your Power of Attorney is signed and witnessed unless it says otherwise with a **condition**.

For example, a **condition** could be:

- “this is only effective once my family doctor says I am incapable”.

Healthcare and treatment – the healthcare practitioner proposing treatment must decide you are mentally incapable of making decisions about your healthcare and treatment before your attorney can act.

Entering a long-term care facility – an “evaluator” decides whether your attorney should make a decision for you about entering a long-term care facility. Evaluators are nurses, doctors, occupational therapists, physiotherapists, psychologists, some social workers, speech language therapists, audiologists or anyone else prescribed by regulation.

It is possible to be mentally capable for some things and not capable for others. For example if you are capable of making decisions about your diet, but not capable of making decisions about your healthcare, your attorney can *only* make decisions about your healthcare.



Who Can I Choose as my Attorney for Personal Care?

You can choose almost anybody as your attorney for personal care, but there are a few legal requirements. You **must** choose someone who:

- is at least 16 years old, and has mental capacity to make decisions
- is not paid to give you health care or residential, social, support, or training services (unless this person is your spouse, partner, or relative)
- does not have a court order against them restricting access to you.

Although not legal requirements, you **might also** want to consider choosing someone who:

- you trust, and who knows you well
- is willing to act as your attorney and make decisions on your behalf, including healthcare and treatment decisions (which may be difficult).



What about a “Living Will” or an Advance Care Plan? Is that Part of the Power of Attorney for Personal Care?

A Power of Attorney for Personal Care is different from an “**advance care plan**” or a “**living will**”. An “advance care plan” or “living will” is a written summary of your wishes with respect to the health care treatment that you do or do not want.

- For example, you can put in writing that you do not want to be kept alive on a respirator if the chances of a full recovery are slim.

A Power of Attorney for Personal Care is a legal document that sets out **who** will make medical decisions if you are mentally incapable. An advance care plan sets out **what** you want those decisions to be. It is not a legal document, so you do not need a lawyer’s help to do an advance care plan. You should speak to your healthcare provider about advance care planning.



FOR MORE INFORMATION, PLEASE CONTACT:

COMMUNITY ADVOCACY & LEGAL CENTRE

**613-966-8686 OR 1-877-966-8686
TTY 613-966-8714 OR 1-877-966-8714**

**158 George St, Level 1
Belleville ON K8N 3H2**

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This booklet gives only general legal information about current laws, not legal advice. If you need legal advice you should contact a lawyer. If you are living on a low income you may be eligible for free legal help.

If you need help with income programs, workers' or tenants' rights, Powers of Attorney, consumer problems, or human rights find your local community legal clinic by calling Legal Aid Ontario at 1-800-668-8258 or visit their website at: www.legalaid.on.ca/en/contact.

If you have a criminal, family or immigration law problem, contact Legal Aid Ontario at 1-800-668-8258.