



POWER OF ATTORNEY & WILLS

Power of Attorney & Wills

➔ PRESENTED BY:

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What is a Power of Attorney?

- It is the actual document that one executes to name people to make decisions for oneself
- What kind of decisions?
 - ✓ Health/Personal care decisions
 - ✓ Property/Financial matters

Types of Power of Attorney Documents

There are two types of Power of Attorney Documents:
Governed by Provincial Legislation

Power of Attorney for Personal Care – the person you name can make decisions about your health care, housing and other aspects of your personal life (such as meals and clothing) if you become mentally incapable of making these decisions.

Continuing Power of Attorney for Property – the person you name can make decisions about your financial affairs (including paying your bills, collecting money owed to you, maintaining or selling your house, or managing your investments).

Continuing Power of Attorney for Property

- ▶ **Minimum age to prepare & to be appointed as an Attorney?**

- ▶ Anyone mentally capable & 18 years of age

- ▶ **When does it come into effect?**

- ▶ Depending on how the document has been drafted –it could come into effect immediately or upon certain conditions being met; must be duly executed & witnessed

- ▶ **When does the document end?**

- ▶ Either when you die, you create a new one, the appointed attorney dies or becomes incapable among other things

Continuing Power of Attorney for Property

Can appoint more than one person or a Trust company

Can act jointly or severally

*Can have more than one Power of Attorney document

Continuing Power of Attorney for Property

- ▶ **What Happens If There Is No Power of Attorney Document and One Becomes Mentally Incapable?**
- ▶ “There is no statutory provision for a default appointment. One of the following could happen:
- ▶ 1. The Ontario Public Guardian and Trustee could be appointed to manage your property - this is called a “statutory guardianship”. A close relative could later apply to take over the formal management of your property.
- ▶ 2. Some of your property, such as pensions and social benefits, could be managed by friends or relatives
- ▶ 3. Someone could apply to be appointed as your Guardian of Property (this requires a Court Order)”

Power of Attorney for Personal Care

- **Minimum age to prepare & to be appointed as an Attorney?**
 - Anyone mentally capable & 16 years of age
- **When does it come into effect?**
- ▶ “For healthcare, it comes into effect when the healthcare provider offering you a treatment believes you are not mentally capable of making healthcare decisions for yourself.
- ▶ For personal care, it comes into effect when you are unable to make the decisions for yourself and the individual(s) you have named steps in to make the decisions, unless it is stated otherwise.”
- **When does the document end?**
 - Either when you die, you create a new one, the appointed attorney dies or becomes incapable among other things.

Power of Attorney for Personal Care

Can appoint more than one person

Can act jointly or severally

Can have more than one Power of Attorney document; however, the most recent one will automatically revoke the earlier one unless stated otherwise

Power of Attorney for Personal Care

- ▶ **What Happens If There Is No Power of Attorney Document and One Becomes Mentally Incapable?**
- ▶ “Everyone in Ontario has an automatic Substitute Decision Maker for Health Care.
- ▶ This means you still have someone to make your health care decisions for you even if you don’t have a Power of Attorney for Personal Care.”

Does one need a lawyer to prepare POA?

NO, however, it helps to have a lawyer help draft it :

To help address the important aspects of preparing the document

To help get creative like instating restrictions among other things

General tips:

- Check in with your Attorney/s if they are able & willing to act as your Attorney
- Ensure they are trustworthy people, have your best interests at heart, are preferably located within Canada/Ontario, can make difficult decisions on your behalf
- Review your documents every once in a while, especially if life circumstances have changed
- It is great to monetarily compensate your Attorney/s for their time
- Safe-keeping & informing the Attorney

What is a Will?

- ▶ A legal document that states who gets your 'estate' **after** your death
- ▶ Governing legislation- "The Succession Law Reform Act, 1990"

Who can make a Will?

- ▶ Anyone of the age of majority

- ▶ 8 (1)“A will made by a person who is under the age of eighteen years is not valid unless at the time of making the will the person,
 - (a) is or has been married;
 - (b) is contemplating marriage and the will states that it is made in contemplation of marriage to a named person except that such a will is not valid unless and until the marriage to the named person takes place;
 - (c) is a member of a component of the Canadian Forces,
 - (i) that is referred to in the *National Defence Act* (Canada) as a regular force, or
 - (ii) while placed on active service under the *National Defence Act* (Canada); or
 - (d) is a sailor and at sea or in the course of a voyage.”

Why do a Will?

- ▶ **To avoid potential conflict**
- ▶ **To ensure people who you wish get what you wish**

Eg: only married spouse can get property not common-law

Eg: step-children cannot get property unless formally adopted

- ▶ **To avoid delays, costs**

The people under a Will

- ▶ The Testator
- ▶ The Executor
- ▶ The legal guardian
- ▶ The Beneficiary
- ▶ The Witness

Types of legally valid Wills

In Ontario, there are 2 types of legally-recognized wills:

- ▶ The **holograph will**, which is entirely hand-written, dated and executed by the testator, this requires no witnesses but can be easily contested;
- ▶ The **will made in the presence of witnesses** written by the testator or by a lawyer. It is dated and executed by the testator before 2 witnesses who have attained the age of majority

What makes a formal Will valid and current situation

- ▶ A Will is valid only if it is in writing
- ▶ Execution of the Will to be witnessed by two witnesses –generally interpreted as “witnessing in the physical presence of two witnesses”
- ▶ *COVID-19 implications: [a regulation under the Emergency Management and Civil Protection Act](#) has permitted virtually witnessing Wills only during the duration of the pandemic

What happens if I do not have a Will?

- ▶ If you die, without having made a Will, the law states that you have died, “intestate” and your property will be distributed as per the provisions of the governing legislation.
- ▶ Eg: If you die while legally married and have no children your estate goes to your spouse. This includes a spouse you're separated from but not legally divorced.
- ▶ *If you have a spouse and children, then if your estate is worth less than \$350,000.00, your spouse gets everything. If your estate is worth more than \$350,000.00, your spouse gets the first \$350,000.00 ('preferential share'). The rest is divided between your spouse and children.
- ▶ If you are not legally married but have children, your children share your estate equally.
- ▶ If you are not married and have no children, your estate goes to your living closest relatives. If you have no relatives, your estate goes to the Ontario government.

Why should I involve a professional?

- ▶ To help address the important aspects of making and drafting a legally valid will
- ▶ To ascertain if you would need multiple wills
- ▶ To address complex situations like creating Trusts
- ▶ To ascertain the taxation implications and guide the process of distribution accordingly
- ▶ “Estate Administration Tax”-In order to obtain an initial certificate of appointment of estate trustee (with or without a will), an estate trustee must pay an estate administration tax at the rate of \$5 per \$1,000 (or part thereof) for the first \$50,000 of estate value and \$15 per \$1,000 (or part thereof) for the estate value in excess of \$50,000 – there are exceptions

Q & A

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The Law Office of Chris Lamannil PC

Resources:

[HTTPS://ADVANCECAREPLANNING.HOSPICEWATERLOO.CA/RESOURCES/](https://advancecareplanning.hospicewaterloo.ca/resources/)

[HTTPS://WWW.CLEO.ON.CA/EN/RESOURCES-AND-PUBLICATIONS/RESOURCES-AND-PUBLICATIONS](https://www.cleo.on.ca/en/resources-and-publications/resources-and-publications)

[HTTPS://WWW.ONTARIO.CA/PAGE/MAKE-POWER-ATTORNEY](https://www.ontario.ca/page/make-power-attorney)

[HTTPS://STEPSTOJUSTICE.CA/LEGAL-TOPIC/WILLS-AND-POWERS-OF-ATTORNEY/WILLS/](https://stepstojustice.ca/legal-topic/wills-and-powers-of-attorney/wills/)

[HTTPS://WWW.ONTARIO.CA/PAGE/OFFICE-PUBLIC-GUARDIAN-AND-TRUSTEE](https://www.ontario.ca/page/office-public-guardian-and-trustee)

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THANK YOU