

Understanding the Legal Dimensions of Financial Literacy: Power of Attorney

ONTARIO EDITION

**NICE**

National Initiative for the Care of the Elderly

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Power of Attorney is a legal document that gives another person the power, or right, to make decisions for you. The person you authorize to make decisions for you is called the **attorney**. The attorney should be someone you trust and does not need to be a lawyer.

➤ In Ontario, there are three types of power of attorney that you can name:

1. Power of Attorney for Personal Care
2. General Power of Attorney for Property
3. Continuing Power of Attorney for Property

What is a Power of Attorney for Personal Care (POAPC)?

➤ A Power of Attorney for Personal Care is a legal document that gives someone else the power to make decisions for you in the event you become mentally incapable. Personal care means:

- Health care
- Medical treatment
- Diet
- Housing
- Clothing
- Hygiene
- Safety

POWER OF ATTORNEY FOR PERSONAL CARE (POAPC)

Why is a POAPC Important?

- If you cannot make personal care decisions on your own, someone else needs to make them for you. This person is called your “substitute decision-maker”.
 - Health care providers must get consent (permission) from your substitute decision-maker.
- According to the law in Ontario, someone must be able to make decisions for you when you are unable to.
 - Unless you have a POAPC, this person is usually a family member.
 - If you do not have a POAPC, family or friend who is available, able and willing, the government will appoint someone to make decisions on your behalf.
- Having a POAPC lets **YOU** choose a person you trust to make your decisions.
- Appointing an attorney for personal care helps to ensure that your decisions about your personal care are followed.
 - For example, you can write in your POAPC which medical treatments you choose to receive.
- Your attorney is required to act in your best interests.

POWER OF ATTORNEY FOR PERSONAL CARE (POAPC)

What Does “Mentally Incapable or Unable to Make a Personal Care Decision” Mean?

1. You cannot understand the information needed to make a personal care decision, **and**
2. You cannot understand the impact of your decisions, or lack thereof.

Who Will Decide That I Cannot Make Decisions on my Own?

- The person you name as your attorney;
- Someone else you name, like a health care professional or friend;
- If you do not name anyone, but state you want your mental incapacity confirmed, it would be confirmed by someone called a “capacity assessor” for a fee.
 - A capacity assessor is a trained professional permitted to determine mental incapacity. For more information, call the **Capacity Assessment Office** at **416-327-6766** or **1-866-521-1033** (toll-free).
- Sometimes, only a health care professional can decide if you are mentally capable of making certain decisions **BEFORE** your attorney can act for you (decisions about medical treatment or admission to a long-term care facility).

POWER OF ATTORNEY FOR PERSONAL CARE (POAPC)

Who Will Decide That I Cannot Make Decisions on my Own? (continued)

- Your ability to make an informed decision is based on the situation and the decision.

If you disagree with a health care professional's decision, you have the right to have your case reviewed by the **Consent and Capacity Board: 1-866-777-7391** (toll-free) or **1-877-301-0889** (TTY).

When Does My POAPC Start to Work?

- When you are no longer able to make your own personal care decisions.

How Do I Make a POAPC?

Making a Power of Attorney is voluntary. There is no special form. Although you can prepare your own, you may want to seek the advice of a lawyer who specializes in this area who will be able to make recommendations on the wording and structure of your power of attorney based on your wishes and an assessment of your personal circumstances. To be valid, the document must:

POWER OF ATTORNEY FOR PERSONAL CARE (POAPC)

How Do I Make a POAPC? (continued)

1. Name the person (or persons) you select as your decision maker for personal care in the event that you become mentally incapable, **and**
2. Be signed by you when you are mentally capable, and dated in the presence of two witnesses who must also sign. The witnesses cannot include:
 - a. Your spouse, partner, child, or someone you treat as your child;
 - b. The person you name as your attorney or their spouse or partner;
 - c. Anyone under 18; **or**
 - d. Anyone who cannot make their own property or personal care decisions.

Where can I get more information?

A sample Power of Attorney form that you can complete is available from the Ontario Ministry of the Attorney General at: www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.pdf

Call the Office of the Public Guardian and Trustee: 1-800-366-0335 (toll-free).

POWER OF ATTORNEY FOR PERSONAL CARE (POAPC)

Tips:

The person you choose as your attorney will be able to make **VERY** important decisions about your health and quality of life. It is important that you:

- Carefully consider whether the person you name is **TRULY** concerned about your personal well-being.
- Make sure the person you name understands what your health care and personal care wishes are.
 - You cannot name a paid caregiver, unless they are also your relative, nor can you name a person who is under 16 or someone who is mentally incapable.
- You can name more than one person as your attorney:
 - **ALL PARTIES MUST AGREE** unless you write in your POAPC that your attorneys can act “jointly and severally”. This means that one of your attorneys will be able to make decisions on their own if the other is unavailable.
- Give a copy of your POAPC to the person(s) you name.
- Keep the document in a safe place that your attorney knows about.
- Make sure your doctor and other health care professionals know that you have a POAPC and how to reach the person(s) you have chosen to act for you.

POAPC & GENERAL POWER OF ATTORNEY FOR PROPERTY

When Does My POAPC Stop?

- When you or your attorney die;
- When your attorney becomes incapable or resigns.
This is why some people have more than one attorney or a substitute attorney;
- If the court appoints a guardian for you; **or**
- When you cancel or sign a new POAPC, for which you must be mentally capable.

What is a Power of Attorney for Property?

1. A **General Power of Attorney for Property** (also called a Non-continuing Power of Attorney for Property) is a legal document that gives someone else the power to manage your finances and property **only** while you are **mentally capable**.
 - A General Power of Attorney for Property ends when you become mentally incapable of making decisions for yourself. Your attorney can no longer act on your behalf.
 - A General Power of Attorney for Property is usually used for a **brief time**. Most people who want to appoint a Power of Attorney for Property make a **Continuing Power of Attorney for Property** instead.

CONTINUING POWER OF ATTORNEY FOR PROPERTY (CPOA)

2. A **Continuing Power of Attorney for Property (CPOA)** is a legal document that keeps on working even if you are deemed mentally incapable of managing your property.

Do I Need a CPOA?

- It is your choice to have a CPOA. Making a Power of Attorney is voluntary.
- You may want to appoint someone that **YOU** choose and trust to be your attorney while you are able to make your own decisions.

When Does a CPOA Start Working?

- **As soon as it is signed and witnessed**, unless you say otherwise in the document.
- If you want your CPOA to **only** start working once you become mentally incapable, **you must say so in writing** in the CPOA.
 - You must state in the CPOA if you want your attorney to decide if you are unable to manage your finances and property.

CONTINUING POWER OF ATTORNEY FOR PROPERTY (CPOA)

What Does “Unable to Manage Property” Mean?

1. You cannot understand information about your property or finances, **and**
2. You cannot understand the impact of your decisions, or lack thereof.

What Can My Attorney Do?

- Almost anything you can do concerning your property and finances unless you state otherwise.
- They can sign documents, start or defend a lawsuit, sell property, make investments, and buy things for you.
- They **CANNOT** make a will or make a new CPOA for you.

What Happens If My Attorney Steals From Me or Misuses My Money?

- If you are mentally capable, you can cancel your CPOA in writing and demand a full accounting.
- You can demand a full accounting of your financial affairs at any time.
- If theft is involved, call your local police.

CONTINUING POWER OF ATTORNEY FOR PROPERTY (CPOA)

What Happens If My Attorney Steals From Me or Misuses My Money? (continued)

- If you are mentally incapable and someone else has evidence suggesting mismanagement or theft, they can call the **Office of the Public Guardian and Trustee (OPGT)** at: **1-800-366-0335** (toll-free).

How Do I Make a CPOA?

- There is no special form. You can write one yourself. To be valid, you must:
- Be 18 years old, mentally capable, and the document must:
 1. Be called a Continuing Power of Attorney for Property **OR** state that it allows your attorney to continue acting for you if you become mentally incapable;
 2. Name one or more persons to act as your attorney for property; **and**
 3. Be signed by you and dated in the presence of two witnesses who will also sign the document. Note that the witnesses cannot include:
 - a. Your spouse, partner, child, or someone you treat as your child;
 - b. The person you name as your attorney or their spouse or partner;
 - c. Anyone under 18; **or**

CONTINUING POWER OF ATTORNEY FOR PROPERTY (CPOA)

Witnesses Cannot Include (continued)

- d. Anyone who cannot make their own property or personal care decisions.

Tips:

- Your attorney is entitled to be paid unless you state otherwise in your CPOA. Consult a lawyer about this.
- According to Ontario law, your attorney must be 18 years of age or older.
- Your attorney is legally responsible for misuse of your properties.
- In your CPOA you can name a “substitute attorney”. This person can only act for you if your first attorney or attorneys are not willing or able to act, or resigns.
- Make sure you **TRUST** your attorney. Ask yourself if they are responsible and good at handling finances.
 - Sadly, it is often family members who misuse their power of attorney responsibilities (For more information please read the *Preventing and Intervening in Situations of Financial Abuse* pocket tool).
- Make sure you talk to the person you name as your attorney about what your wishes are for your money and property.

- You can name more than one person as your attorney:
 - **ALL PARTIES MUST AGREE** unless you write in your CPOA that your attorneys can act “jointly and severally”. This means that one of your attorneys will be able to make decisions on their own if the other is unavailable.
- You can specify in your CPOA that your family must be kept informed of all decisions and provided with full information.
- Give a copy of your CPOA to your attorney(s).
- Keep the document in a safe place that your attorney knows about.
- Tell your doctor and other health care professionals about your CPOA and how to reach your attorney if needed.

When Does My CPOA Stop?

1. When you or your attorney die;
2. When your attorney becomes incapable or resigns.
This is why some people have more than one attorney or a substitute attorney;
3. If the court appoints a guardian for you; **or**
4. When you cancel or sign a new CPOA, for which you must be mentally capable.

This is one of the series of Financial Literacy for Older Adults pocket tools. For more information about NICE tools or related training events, please visit www.nicenet.ca

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