

### **What happens if I do not have an Enduring Power of Attorney and I become mentally incompetent?**

If you do not have an Enduring Power of Attorney and become mentally incompetent, someone, usually a family member, will have to apply to court for an Order of Committeeship.

The Order of Committeeship allows the committee to make financial and personal decisions for someone who is not mentally competent.

### **What does the Public Guardian and Trustee do?**

The Public Guardian and Trustee is appointed on a last resort basis to look after the financial and personal matters of a person who is not mentally competent.

This would happen if there is no one willing or capable able to look after a person's financial and legal matters.

The Public Guardian and Trustee may also be appointed if an attorney under an enduring power of attorney is not managing the donor's property appropriately.

### **Community Legal Education Association**

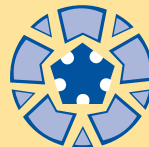
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# **Powers of Attorney**

### **What is a Power of Attorney?**

A power of attorney is a document that allows you to choose someone to handle your legal and financial matters if you no longer can.

### **What is the person who is making the power of attorney called?**

The donor.

### **What is required to be a donor?**

The donor must be an adult and be capable of understanding what a power of attorney is and what authority they are giving.

### **What is the person who is granted power of attorney called?**

The attorney.

### **What are the duties of an attorney?**

Attorneys are not allowed to use the maker's funds for their own benefit. They must always act for the benefit of the donor.

### **What are the requirements for someone to be an attorney under a power of attorney?**

Your attorney must be an adult, mentally competent and not bankrupt.

Most importantly, your attorney should be someone you trust to look after your finances.

### **Can attorneys under a power of attorney make personal or health care decisions?**

Attorneys cannot make personal or health decisions.

### **Are attorneys under a Power of Attorney entitled to be compensated?**

If the power of attorney document does not set out any compensation, an attorney can apply to court for fair and reasonable compensation.

### **Are there different kinds of Powers of Attorney?**

A power of attorney can be specific, allowing the attorney to perform specific, limited acts, for example, looking after the sale of an asset. If you are appointing an attorney to sell your home, it cannot be your spouse. The authority ends when the task is completed or when the donor becomes mentally incompetent.

A power of attorney can be general, allowing the attorney to handle all of your financial matters. The attorney's authority, under a general power of attorney, ends if the donor becomes mentally incompetent.

A power of attorney can be a springing power of attorney, which means it takes effect when a particular event happens, for example, when the maker of the power of attorney is no longer competent.

### **What is an Enduring Power of Attorney?**

An enduring power of attorney remains effective, even if the maker becomes mentally incompetent.

### **What are the formal requirements for making an Enduring Power of Attorney?**

An enduring power of attorney must be in writing

It must be signed by the donor.

It must be witnessed by:

- a marriage commissioner,
- a doctor,
- a lawyer,
- a notary public,
- a judge, magistrate or justice of the peace,
- an RCMP officer ,
- or a police officer.

It must state that it continues to be effective even if the donor becomes mentally incompetent.

### **Can I appoint more than one attorney in an enduring power of attorney?**

You can appoint one attorney or more than one.

If you appoint more than one, they can either be joint attorneys or successive.

Joint attorneys jointly look after your finances. If they cannot agree, the first one named makes the final decision.

If you appoint successive attorneys, the first one acts, the successive attorney only acts if the first one is not able to act.

### **When does the authority of the attorney(s) under an Enduring Power of Attorney end?**

The authority of the attorney or attorneys ends when the maker dies or if the attorney gets the court's permission to resign.

It would also end if the Public Trustee and Guardian is appointed by the court to look after the donor's financial matters.

As long as the donor is competent, he or she can revoke the power of attorney at any time in writing.

### **How can the attorney(s) be held accountable?**

Attorneys must keep accurate records of their dealings with the donor's finances.

Attorneys can be required to provide an accounting every year to a person named in the power of attorney.

If no one is named and the donor is no longer competent, the attorney must provide an accounting every year to the maker's closest relative.

If the attorney will not provide an accounting in that situation, a family member can apply to court for an accounting or to have the attorney removed.