



## **Powers of Attorney**

### **Why have powers of attorney become so important?**

Having a power of attorney has always been a good idea.

In years past, however, their importance was not widely known or appreciated. Indeed, the prevailing attitude seemed to be that people could get along just fine without having one.

In 1995 everything changed. During that year, the provincial government passed legislation which dramatically changed the rules, as well as the public's awareness, on issues relating to how decisions will be made for an incapable person. For the first time in the history of Ontario, comprehensive laws concerning incapacity were codified in plain language.

These laws spelled out what happens when a person does not, while capable, formally appoint a "substitute decision-maker".

People were shocked to learn that the Public Guardian and Trustee - the government - would take over.

People now recognize and appreciate the importance of the issue and are making the effort to appoint someone of their own choosing to act as their "substitute decision-maker".

### **Is my old Power of Attorney good enough?**

If it was prepared prior to 1995, it is "grandfathered" and therefore remains valid.

Its usefulness is limited, however, as it only applies to property matters. It does not cover personal care matters.

A power of attorney for personal care will be needed for that purpose.

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

Yes. The legislation contemplates two different and separate forms - one for property, and the other for personal care.

Different considerations apply to each form.

Personal care issues involve matters such as food, shelter, hygiene, clothing, and health care consent.



Property issues involve taking care of a person's bank accounts, investments, and other financial matters.

### **Is a "living will" the same thing as a power of attorney for personal care?**

No. Its scope and application covers only one aspect of personal care considerations.

It is a generally recognized way of expressing one's wishes respecting the withholding of medical treatment in the event of a terminal illness or condition.

A power of attorney for personal care, on the other hand, includes a wide range of issues which go far beyond what a living will covers.

While a living will is important and significant to many people, it should not be perceived as a replacement for appointing a person to act as your substitute decision maker for personal care matters.

### **What if I become incapable without having prepared a power of attorney?**

If you do not have a spouse, partner, or relative who is prepared to make an application to the Court to become your court-appointed guardian, and an assessor has issued a certificate of incapacity, the Public Guardian and Trustee will become your guardian over your property or personal care or both, depending on the circumstances.

The only way to circumvent both court and government intervention is to have powers of attorney properly prepared and executed when you are capable of doing so.

### **Where should the Powers of Attorney be kept?**

Generally, they should be kept in safekeeping with the rest of your important personal papers. You should not hide them. The attorney(s) should be made aware of where you have kept them, as in the case of an emergency quick and easy access and retrieval would be critical.

### **Who should I appoint as my attorney?**

There are no set rules. Each person's unique family and personal situation will dictate who would be appropriate.

When choosing your attorney, keep in mind such factors as: proximity to your residence and assets; the person's abilities to handle the task; the degree of trust you have in the person; and the person's age.



In many cases it is advisable to appoint more than one person (either jointly or jointly and severally), or to appoint one or more alternates in the event your first choice is unable or unwilling to act as your attorney.

### **When does the power of attorney take effect?**

For a power of attorney for personal care, it does not become effective until a qualified assessor, appointed by the provincial government, confirms that you are incapable of making personal care decisions.

Conversely, a power of attorney for property takes effect immediately.

For those who only wish to have it used in the event of incapacity and for no other reason, it is the practice of Dust Evans to retain all of the originals in safekeeping at this office together with a Direction for its release in certain events - for example, upon the production of a physician's letter confirming your incapacity.

In our opinion, this practice is preferable to inserting words of limitation in the document itself, as different persons or institutions requiring the document may interpret the words differently and require varying degrees of proof of incapacity.

### **Can I revoke my power of attorney?**

Yes, but the revocation must be done in writing and executed in the same way as a continuing power of attorney.

This means it must be witnessed by two persons over the age of eighteen years.

After the revocation form has been executed, care must be taken to make sure all persons and institutions who might act upon the attorney are notified of the revocation.

### **How much do they cost?**

Having powers of attorney completed with the assistance of a lawyer is relatively inexpensive. In most cases the cost will be \$250.00 for a couple, and \$200.00 for a single person.

When you consider the cost in terms of time and money for a court application, the benefits of having powers of attorney in place are obvious.



## **How does my Will fit into all of this?**

Your powers of attorney are affective during your lifetime. Upon death they become invalid, and your Will would take effect.

It is a good idea to have your Will and powers of attorney prepared together, so that the transition between incapacity and death will unfold smoothly. The two documents are important pieces of your overall estate plan.