UNDERSTANDING POWERS OF ATTORNEY

Find out why executing a Power of Attorney is a key component of your comprehensive health, financial and estate plan.

Many Canadians believe that their families will be able to take charge of their affairs if they can no longer make decisions for themselves. This isn't the case for everyone.

Executing a Power of Attorney — when you name someone to make financial and/or personal decisions for you when you can no longer make them yourself — is the best way to guarantee you have someone you can really trust, who knows your wishes. Otherwise, the government may have to appoint someone to make certain decisions for you — someone who may not share your values or know your wishes.

Understanding Powers of Attorney enables you to plan ahead and be confident that your plans will be carried out by the right person. For this reason, executing a Power of Attorney is a key component of your comprehensive health, financial and estate plan.

What is a Power of Attorney ("POA")?

A POA is a legal document allowing you (the "donor") to share decision-making power over your financial and/or personal affairs with another person, called your "attorney." By executing a Power of Attorney, you do not lose your own ability to make those decisions.

There are various types of Powers of Attorney across Canada. Each province has different POA jargon and, even more importantly, has different laws for making and relying on these powerful documents.

Nevertheless, Powers of Attorney fall into two broad categories:

1. POAs for property
2. POAs for personal care

POAs for property enable your attorney to make decisions about your finances, personal property and real estate.

When it comes to personal care, your attorney can make decisions about your personal well-being, including health care, nutrition, shelter, clothing, hygiene and safety.

Why would you need or want a Power of Attorney?

POAs can be viewed as extensions of yourself. By choosing a trusted person and providing adequate instructions, you can assure that your wealth and well-being are maintained when you can no longer make necessary decisions.

In the unfortunate circumstance that your mental abilities have permanently diminished, the existence of valid POAs will ease the emotional burden on your family and avoid or substantially reduce the cost, complexity and time delays that may be associated with a court application for your guardianship.

Who can give a Power of Attorney? Generally, you can give someone Power of Attorney if you are...

- 18 or older
- Mentally competent (capable of understanding what you are doing)

Who can be given a Power of Attorney? Generally, you can appoint someone as your attorney if they are...

- 18 or older
- Able to understand information relevant to making POA-authorized decisions
- Able to appreciate the consequences of making or avoiding POA-authorized decisions

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Who should be your attorney?

There is no rule for choosing who should be your attorney. Some characteristics to consider:

- Trustworthiness
- Familiarity with you and your affairs
- Business acumen (as relevant)
- Family politics and emotional strains
- Decisiveness and diplomacy

For spouses, the logical choice is the other spouse. For elderly parents, quite often adult children will be selected. Close friends and trusted professional advisors may also be considered.

Can there be more than one attorney?

Yes. In fact, your "property" attorney need not be the same person as your "personal care" attorney. You can also have jointly acting attorneys, attorneys with a very narrow scope of responsibility (e.g., monitoring a stock portfolio) and attorneys that act at different times.

Serious thought should also be devoted to determining who will be the substitute if an attorney is unable, unavailable or unwilling to act when the time comes.

When can your attorney use the Power of Attorney?

As you prefer, a POA can be effective immediately upon execution, or can be limited to circumstances you define. These can be time constraints, specified personal conditions or some type of external event.

Most provinces have introduced Enduring Power of Attorney (EPA) legislation that permits the attorney you appointed under POA to end if you become mentally incapacitated. However, the law allows you to include a clause in the POA document allowing the attorney to continue to act on your behalf, even after you have lost mental capacity.

Is a Personal Care Power of Attorney a "Living Will"?

No. The technical name for a living will is an "advance health care directive." It states your preferences for medical treatment in certain situations, and it is generally prepared with the assistance of your doctor. It is the "what" of your medical treatment decisions, whereas the Personal Care POA is the "who." That said, the two are often combined or at least executed in conjunction with one another.

What if you don't have a Power of Attorney?

You may simply experience some inconvenience at a time when a POA would have been a helpful tool.

However, in situations where you have become mentally incapacitated, your family's ability to manage your affairs may be severely limited, and an expensive and time-consuming court application for your guardianship may be necessary.

Want to learn more?

If you have any questions after reading this information or would like to know how a POA would work in your situation or province, it's always a wise decision to seek advice from a Power of Attorney professional. Your financial advisor can speak to Empire Life's tax and estate planning professionals about making your Power of Attorney.