

## Who should be your attorney?

There is no hard rule on who should be your attorney. Generally, anyone who is mentally competent and is of the age of majority is qualified.

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.

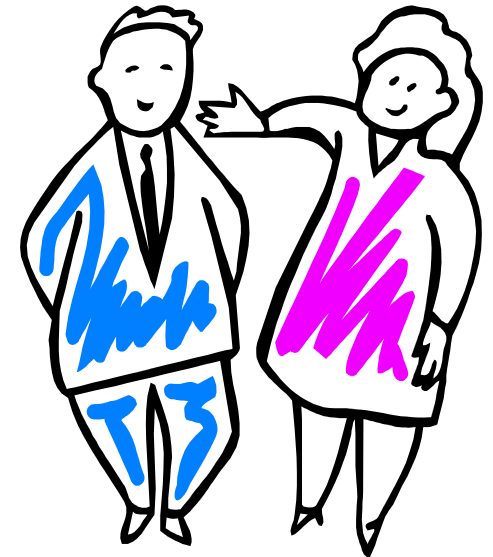
Serious thought should also be devoted to determining who will be the substitute if an attorney is unable, unavailable or unwilling to act when the time comes.

## Some characteristics to consider:

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

# Understanding *Powers of Attorney*

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## ONTARIO

*This brochure is intended to assist individuals in understanding certain concepts of wealth & estate planning, and may contain tax and legal information specific to one or more provinces within Canada. It is not a substitute for consultation with a competent professional. Specifically, this is not a legal, tax or investment opinion on any particular planning strategy or personal fact situation. Interested readers are encouraged to contact a competent professional advisor to further assist them.*

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*Powers of Attorney are key components of your comprehensive health, financial and estate plan.*

*Though it's been over a decade since the Ontario government changed the laws governing them, Powers of Attorney remain a mystery to most people.*

*Here are the facts.*



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## **What is a Power of Attorney (“POA”)?**

A POA is an opportunity for 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.

Historically, POAs in Ontario only dealt with property matters and were generally only used in business affairs. Since 1992, there are actually two types of POAs commonly used in Ontario: the Power of Attorney for Property and the Power of Attorney for Personal Care.

### **Power of Attorney for Property**

A Property POA enables your attorney to make decisions regarding your finances, personal property and real estate. Subject to the restrictions you define, your attorney will be able to do anything you can do with your property, except execute a Will (or effect testamentary dispositions such as changes to insurance beneficiary designations).

### **Power of Attorney for Personal Care**

A Personal Care POA enables your attorney to make decisions relating to your personal wellbeing, 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 wellbeing are maintained when you are not available to 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.

### **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 such circumstances as you define. These can be time constraints, specified personal conditions or some type of external event.

A special feature confirmed in the 1992 Ontario legislation is the ability for your attorney to continue to act even after you have lost mental capacity. Under the common law, an expensive and time-consuming court application at such time, just when the attorney’s ability to act quickly would be needed most. POAs that contain this feature are referred to as “enduring” or “continuing” powers of attorney.

## **Are old-form Powers of Attorney still valid?**

POAs executed under the legislation that existed prior to 1992 may still be valid for property matters. However, for personal care decisions, only POAs under the new legislation are valid.

### **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.