

What is a Power of Attorney?

A Power of Attorney is a legal document in which you entrust someone, known as your attorney, to hold the right to make decisions for you if you are no longer able to do so on your own.

There are two types of Power of Attorney:

- **Power of Attorney for Personal Care:** A person you name that can make decisions about your health care, housing, and other aspects of your personal life if you become mentally incapable of making said decisions. The person you choose as your power of attorney for personal care must be at least 16 years of age.
- **Power of Attorney for Property:** An individual that can make decisions about your financial affairs. The person you choose as your power of attorney for property must be at least 18 years old.

Before You Begin

In order to designate a power of attorney for property, you must be able to prove that you are cognitively capable at the time of the decision. It must be clear to the court that:

- You know the value of your assets and what they are.
- You are aware of your obligations to your dependents.
- You understand the authority you are giving to the person holding Power of Attorney.

(source: <https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/incapacity/poa.php>)

Choosing Your Attorney for Personal Care

The person you decide to appoint as your attorney for personal care should be someone you trust to make decisions about your housing, food, health, safety, hygiene and clothing. This could be a family member or a close friend. It is important to consult with the person you hope to make your attorney and make sure that he or she is willing to take on this responsibility if needed.

Choosing Your Power of Attorney for Property

The person you choose should understand your wishes and agree to this important responsibility, which includes keeping detailed records of all transactions involving your money and assets. You may want to include a statement in your Power of Attorney that says the attorney can only make decisions if you become mentally incapable.

Choosing a POA to make decisions regarding your property is a very important decision and needs a lot of careful thought. Therefore, it is essential to consider whether the person is willing to take on this responsibility if need be. There is a lot of work involved, and the law expects your attorney to meet very high standards. Consider whether the person is trustworthy, responsible and good at handling finances. Will the person make sure you have all the things you need? Will your privacy be respected? Can you trust the person not to misuse your money? These are just a few of the things you should consider before you decide.

Also, note that your attorney is entitled to take payment from your funds at a rate specified by law unless you say otherwise in your CPOA (Continuing Power of Attorney for Property). If you want to set the amount yourself, or you don't want your attorney to be paid at all, you must include this in the document.

If your CPOA is silent on the matter of payment your attorney will be entitled to:

- 3% of money received;
- 3% of money paid out on your behalf; and
- 3/5 of 1% of the average annual value of your assets.

When Should you Start This Process?

There is no benefit to waiting. Being young and healthy does not mean the unthinkable can't happen. Car accidents alone have, and can, lead to mental incapacity or at best a long hospital stay hindering your ability to contribute to any major financial decision.

Talk to your advisor if you are looking to have a lawyer write your power of attorney. Consider this if your personal or business affairs are complicated. Always store legal documents in a safe place. Make sure that your attorney, your bank and anyone else who needs to know about these documents has a copy or knows where to get one. The government does not keep a registry of powers of attorney.