

POWER OF ATTORNEY 101

Power of Attorney 101

➡ Presented by:

Ms. Chris Lamannil

Barrister & Solicitor | Mediator | Notary Public

THE LAW OFFICE OF CHRIS LAMANNIL PC

AND

**Director of Legal Services: ONTARIO HEROES
HEALTH & SOCIAL SERVICES**

➡ Phone: 905-361-8708

➡ Fax: 905-896-3005

➡ Web: <http://chrisgllaw.ca/>

➡ Web: <http://ontarioheroes.ca/>

What is a Power of Attorney?

- It is the actual document that one executes to name people to make decisions for oneself
- What kind of decisions?
 - ✓ Health/Personal care decisions
 - ✓ Property/Financial matters

Types of Power of Attorney Documents

There are two types of Power of Attorney Documents:
Governed by Provincial Legislation

Power of Attorney for Personal Care – the person you name can make decisions about your health care, housing and other aspects of your personal life (such as meals and clothing) if you become mentally incapable of making these decisions.

Continuing Power of Attorney for Property – the person you name can make decisions about your financial affairs (including paying your bills, collecting money owed to you, maintaining or selling your house, or managing your investments).

Continuing Power of Attorney for Property

- Minimum age to prepare & to be appointed as an Attorney?
 - Anyone mentally capable & 18 years of age
- When does it come into effect?
 - Depending on how the document has been drafted –it could come into effect immediately or upon certain conditions being met; has to be duly executed & witnessed
- When does the document end?
 - Either when you die, you create a new one, the appointed attorney dies or becomes incapable among other things

Continuing Power of Attorney for Property

Can appoint more than one person or a Trust company

Can act jointly or severally

*Can have more than one Power of Attorney document

Continuing Power of Attorney for Property

What Happens If There Is No Power of Attorney Document and One Becomes Mentally Incapable?

“There is no statutory provision for a default appointment. One of the following could happen:

1. The Ontario Public Guardian and Trustee could be appointed to manage your property - this is called a “statutory guardianship”. A close relative could later apply to take over the formal management of your property.
2. Some of your property, such as pensions and social benefits, could be managed by friends or relatives
3. Someone could apply to be appointed as your Guardian of Property (this requires a Court Order)”

Power of Attorney for Personal Care

➤ Minimum age to prepare & to be appointed as an Attorney?

- Anyone mentally capable & 16 years of age

➤ When does it come into effect?

“For healthcare, it comes into effect when the healthcare provider offering you a treatment believes you are not mentally capable of making healthcare decisions for yourself.

For personal care, it comes into effect when you are unable to make the decisions for yourself and the individual(s) you have named steps in to make the decisions, unless it is stated otherwise.”

➤ When does the document end?

- Either when you die, you create a new one, the appointed attorney dies or becomes incapable among other things.

Power of Attorney for Personal Care

Can appoint more than one person

Can act jointly or severally

Can have more than one Power of Attorney document; however, the most recent one will automatically revoke the earlier one unless stated otherwise

Power of Attorney for Personal Care

What Happens If There Is No Power of Attorney Document and One Becomes Mentally Incapable?

“Everyone in Ontario has an automatic Substitute Decision Maker for Health Care.

This means you still have someone to make your health care decisions for you even if you don't have a Power of Attorney for Personal Care.”

Does one need a lawyer to prepare POA?

NO, however, it helps to have a lawyer help draft it :

To help address the important aspects of preparing the document

To help get creative like instating restrictions among other things

General tips:

- Check in with your Attorney/s if they are able & willing to act as your Attorney
- Ensure they are trustworthy people, have your best interests at heart, are preferably located within Canada/Ontario, can make difficult decisions on your behalf
- Review your documents every once in a while especially if life circumstances have changed
- It is great to monetarily compensate your Attorney/s for their time
- Safe-keeping & informing the Attorney

Q & A

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THE LAW OFFICE OF CHRIS LAMANNIL PC

Resources:

<https://advancecareplanning.hospicewaterloo.ca/resources/>

<https://www.cleo.on.ca/en/resources-and-publications/resources-and-publications>

<https://www.ontario.ca/page/make-power-attorney>

CHRIS@CHRISGLLAW.CA

CONTACTUS@ONTARIOHEROES.CA

THANK YOU