

POWERS OF ATTORNEY

Many people believe that if something should happen to them, their spouse or other family member can automatically look after their financial affairs or make decisions regarding personal care. Every day decisions like paying bills, managing assets and health care issues require signed powers of attorney giving authority to somebody else to act on your behalf.

Types of Powers of Attorney

There are two types of powers of attorney: one is a General Power of Attorney (called a "Mandate" in Quebec) and the other is a Power of Attorney for Personal Care (called a "Mandate" in Quebec). Both are legal documents that allow you to authorize another person or persons to act on your behalf should you become mentally or physically incapacitated.

Note: Every province has its own laws and regulations relating to powers of attorney for financial matters and personal care decisions.

General Power of Attorney for Property

A general power of attorney allows you to give another person broad power to act on your behalf. It can be all-encompassing and grant authority to make virtually any type of decision relating to your property that you could make yourself, except make a will. A general power of attorney is usually structured to have immediate effect and may contain a 'continuing' clause so it will remain effective should you become mentally incapacitated. If you do not have a 'continuing' power of attorney and you become mentally incapable, a friend or family member will have to petition the courts to be given this power.

You may also give a 'limited' power of attorney that will permit someone to make financial decisions for you in certain limited circumstances. i.e giving someone the temporary ability to make transactions on your behalf if you will be out of the country and unreachable for an extended period of time.

It is important to note that the general power of attorney ceases at death at which point the will of the deceased takes over.

Choosing Your Attorney

Deciding who should be able to deal with your property if you become mentally incapacitated can be a difficult decision. It is critical that you give careful consideration to the person who will have access to your assets and control over your financial well-being. You can have more than one attorney, but you should stipulate whether they must act together, by majority or individually.

Power of Attorney for Personal Care

A power of attorney for personal care comes into effect when the person is unable to understand the reasons for making decisions concerning their own personal care. This incapacity could be caused, for example, by an accident or illness. This power of attorney allows you to appoint another person to make decisions regarding your physical well being. For example, the Ontario's Substitute Decisions Act, 1992 defines personal care to include health care, nutrition, shelter, clothing, hygiene or safety. Without this legal document most of the decisions will be at your physician's discretion or the Public Guardian and Trustee. A power of attorney for personal care may sometimes be accompanied by a Living Will. A Living Will (also known as an 'advance medical care directive' or 'health care directive') sets out your preferences for medical care concerning continued life support and similar important issues if you're suffering from a terminal condition

Living Wills have legal effect in some provinces, but their primary purpose is to give direction to family about your wishes.

Conclusion

Preparing powers of attorney in advance allows you to choose who will look after your financial affairs and personal well being according to your wishes. The role of the government is to act as substitute decision-maker only for people who have no one else to make decisions on their behalf. A person appointed under a general power of attorney or a power of attorney for personal care will have first right to act as substitute decision-maker.

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