



Powers of Attorney

This booklet contains forms for
Continuing Power of Attorney for Property
and
Power of Attorney for Personal Care

Ministry of the Attorney General

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Ce document, intitulé “Les procurations”, est également disponible en français. Pour en obtenir un exemplaire, veuillez écrire à l’adresse suivante:

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Power of Attorney for Personal Care Form

Ontario's Power of Attorney Laws

This booklet contains instructions and forms for a Continuing Power of Attorney for Property and a Power of Attorney for Personal Care.

By making powers of attorney, people can plan ahead and be confident that their plans will be carried out.

The role of government is to act as substitute decision-maker of last resort only for people who have no one else to make decisions on their behalf. If there is no power of attorney, a family member or friend may have to apply to be appointed as guardian.

Powers of attorney which were properly made under previous laws of Ontario remain legally valid.

The forms for a Continuing Power of Attorney for Property and a Power of Attorney for Personal Care contained in this booklet were revised on March 29, 1996 in accordance with amendments to the *Substitute Decisions Act, 1992*. Former versions of these forms may be used and will be valid if properly completed and witnessed.

If you have questions after reading the instructions, you may wish to seek advice from a legal professional.

Some Important Definitions

This list of definitions will help you understand some of the unfamiliar legal or technical terms.

Assessor

Assessors are persons who are authorized to conduct an assessment of a person's mental capacity for certain purposes such as appointing a guardian for property without going through the court process. They have appropriate professional backgrounds and have successfully completed a training course in capacity assessment. They are independent of the government.

Continuing Power of Attorney for Property

A Continuing Power of Attorney for Property is a legal document in which a person gives someone else the authority to make decisions about their finances. The person who is named as the attorney does not have to be a lawyer. The power of attorney is called "continuing" because it can be used after the person who gave it is no longer mentally capable to make the financial decisions themselves. Some people use the word "durable" which means the same as "continuing".

Guardian of Property

A guardian of property is someone who is appointed by the Public Guardian and Trustee or the court to look after an incapable person's property. Both the guardian and the incapable person must be at least 18 years old. A guardian is different from an attorney; an attorney is chosen by the individual, before becoming incapable, to act on their behalf, while a guardian is appointed after incapacity. A guardian can be a statutory guardian or a guardian appointed by the court.

Guardian of the Person

A Court may appoint a guardian of the person to make decisions on behalf of an incapable person in some or all areas of personal care, usually because there is no power of attorney for personal care. The guardian must be at least 16 years old.

Incapacity

Under the *Substitute Decisions Act, 1992*, incapacity refers to mental incapacity. It means that the person is unable to understand information that is relevant to making a decision or is unable to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Partners

Two people who have lived together for at least one year and who have a close relationship which is of primary importance in both their lives are considered to be partners.

Personal Care

Personal care includes health care, nutrition, shelter, clothing, hygiene, and safety.

Power of Attorney for Personal Care

A Power of Attorney for Personal Care is a legal document in which one person gives another person the authority to make personal care decisions on their behalf if they become mentally incapable.

Property Management

The *Substitute Decisions Act, 1992*, refers to decisions about property management and powers of attorney for property. "Property" means finances, which include any type of financial decision or transaction that a person would make in the course of managing his or her income, spending, assets, and debts. For example, it could include budgeting expenses and paying bills, doing tax returns, safeguarding valuables, selling real estate, or making loans.

Public Guardian and Trustee

The Public Guardian and Trustee's role is to act as substitute decision-maker of last resort on behalf of those mentally incapable people who have no one willing or able to act on their behalf.

Statutory Guardian

A statutory guardian is a person who is appointed to act on another person's behalf without going to court. Statutory guardianship applies only to property or finances; there is no statutory guardianship for personal care. A statutory guardian can be the Public Guardian and Trustee (PGT) or someone approved by the PGT to replace the PGT as statutory guardian.

Continuing Power of Attorney for Property

This booklet contains step by step instructions for completing the enclosed Continuing Power of Attorney for Property form.
(Made in accordance with the Substitute Decisions Act, 1992)

Decisions About Property

If you become mentally incapable, who will pay your bills and your taxes? Who will look after your bank accounts? Who will manage your real estate and investments? The person you choose as your "attorney" for property will take care of these things for you. (The word "attorney" does not mean "lawyer.") The attorney can be a relative, friend, or someone else.

You may use the form contained in this booklet to appoint a person of your choice to make decisions about your **property** and manage your **finances** on your behalf. This may include doing things such as signing documents for you, paying your bills, or selling your home. This power of attorney will allow the person you appoint to manage your financial affairs even if you become mentally incapable. The person you appoint is called your "attorney for property." You may name more than one attorney if you wish.

If you have already made a power of attorney for property that continues to be effective after you become mentally incapable, you do *not* need to make a new one.

If you wish, you may use another form or make your own, but if you do this, make sure that it meets the legal requirements necessary under the *Substitute Decisions Act, 1992* to make a valid continuing power of attorney.

It's important to know that you are not required to appoint an attorney for property. This is **your** choice. Giving a power of attorney to someone is a very serious matter. You are giving the person you appoint significant power over your property. There is

This form does not allow your attorney to make decisions about your personal care. If you wish to appoint an attorney for your personal decisions you can make a separate document called a "Power of Attorney for Personal Care."

always a risk that your attorney could misuse this power. If you have any doubts about the motives or ability of the person you are considering - or are under any pressure from your proposed attorney to pick him or her - do not appoint that person.

Before you decide, you may want to talk with your family or close friends. Although you are not required to consult a lawyer in order to make a legally binding power of attorney, it is a good idea to do so. Consulting with other expert advisors is also a good idea, providing they are impartial and concerned only with your best interests.

This document includes guidelines designed to help you complete this power of attorney. They do not cover every option available in the Substitute Decisions Act, 1992. They are not legal advice. Some legal terminology in the statute has been described here in simpler words to make it easier to understand.

The guidelines also point out some of the reasons why you may or may not wish to make certain choices. But remember, all decisions are up to you.

Refer to the enclosed Continuing Power of Attorney for Property form as you review the following instructions.

Part 1:

APPOINTING YOUR ATTORNEY

Read this section carefully before you begin to complete the power of attorney form.

To make a valid power of attorney, you must be 18 years of age or more and "mentally capable" of giving a continuing power of attorney for property.

This means that you:

- know what property you have and its approximate value;
- are aware of your obligations to those people who depend on you financially;
- know what authority your attorney will have;
- know that your attorney must account for all the decisions he or she makes about your property;
- know that, if you are capable, you may cancel your power of attorney;
- understand that unless your attorney manages the property prudently, its value may decline;
- understand that there is always the possibility that your attorney could misuse the authority.

Consider who you want to appoint as your attorney for property. You can choose anyone you want as your attorney as long as he or she is 18 years of age or more. Many trust companies are prepared to act as attorney and charge a fee for this service. Some individuals choose this option because they want an attorney who is professional and impartial.

Talk to the person you wish to appoint and make sure that he or she is willing to accept the responsibility involved in being your attorney for property.

It is important to know that by making this power of attorney, you revoke (cancel) any other continuing powers of attorney for property that you have made before. If you *have* made such a power of attorney before and you *don't* want to revoke it, you should consult with a lawyer so that he or she will make the necessary changes to this form.

If you want more than one person involved in your financial decisions, you can name more than one person to be your attorney for property. But you are not required to do so. On the other hand, you may decide not to name more than one attorney if you're concerned about the possibility of disagreements or if you believe it may be difficult for others to deal with more than one person concerning your finances.

Please note that you cannot appoint the Public Guardian and Trustee (PGT) as your attorney for property unless the PGT agrees in advance in writing to act as attorney for you.

Once you have decided who you want to appoint as your attorney(s), write your name and the name of the person(s) you are appointing in the space provided in **Part 1** of the power of attorney form which follows page eight of these instructions.

Part 2:

JOINT OR SEPARATE ATTORNEYS

Fill out this part **only** if you have named more than one attorney and you want your attorneys to be able to make decisions separately, that is, without having to act together.

You can name more than one person as your attorney for property. If you do this, you may decide whether they will share the job or divide their responsibilities. Or, you could name one person as your attorney and another person as a substitute or backup who could step in if your first choice resigns, gets sick or dies.

If you have appointed more than one attorney in this form, the law will require them to make decisions together unless you specifically give them permission to act separately. You can give permission to act separately by writing it down in this part of the form. If you don't do this, your attorneys will be required to act together all the time.

There are some good reasons for giving your attorneys the flexibility to make decisions separately. Think, for example, about what would happen if one of your attorneys was temporarily unavailable because of sickness, vacation, or some other reason. If your attorneys are allowed to act separately, this will not be a problem.

On the other hand, you may decide not to give this permission if you want to ensure that there is always a "double-check" regarding the decision. You may also wish to avoid the risk of inconsistent decisions that may occur as a result of attorneys acting separately.

If you decide that your attorneys are going to make decisions together, it's a good idea to specify how disagreements get resolved. You might say that in a case of conflict, one attorney's decision will override the other's. Otherwise, your attorneys might have to go to Court and the judge will have to decide.

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If you have named more than one attorney and you want them to be able to act separately from one another, write the words “jointly and severally” in the space provided in **Part 2** of the form. (“Jointly and severally” is a legal term which means “together and separately.”) If you don’t do this, your attorneys will be required to make your financial decisions together at all times.

Part 3:
SUBSTITUTE ATTORNEY (This part is optional.)

It could happen that your appointed attorney may not be willing or able to act on your behalf when the time comes. Or something may happen after your attorney has begun to make decisions on your behalf that prevents him or her from continuing to act for you. In either case, you could be left with no one to manage your financial affairs. So you may wish to consider naming a substitute attorney.

This is especially important if you have named only one attorney. If you have named more than one attorney, there is less reason to be concerned because the remaining attorney can usually carry on if something happens to the other. You may still want to name a substitute, however, to replace the one who cannot act. There is no guarantee that something will not happen to your remaining attorney or you may feel strongly that there should always be more than one person involved in your financial decision-making.

Your substitute attorney will have the same authority and powers as the attorney he or she replaces.

If you choose to name more than one person to act as your substitute attorney, they would have to make decisions together unless you say otherwise by writing in the words “jointly and severally” after their names. (See **Part 2**)

To name a substitute attorney, complete **Part 3** of the enclosed power of attorney form.

Part 4:

AUTHORITY OF ATTORNEY(S)

This part of the form is very important. It tells your attorney, and people who deal with him or her, the

types of financial decisions your attorney is allowed to make on your behalf.

This part of the form gives your attorney(s) the authority to make *any kind of financial decision that you could make yourself – except make a will*. If you wish to limit your attorney’s authority, you may do so later in **Part 5** of this form.

Part 4 of the form also states that the power of attorney may be used *even if you become mentally incapable of making financial decisions*. It makes it clear that you want the power of attorney to “continue” to be effective if this happens.

Part 5:

CONDITIONS AND RESTRICTIONS (This part is optional)

The law permits you to limit your attorney’s authority. For example, you may limit your attorney to transactions concerning specific assets, such as your bank accounts, or prohibit him or her from dealing with a particular piece of property.

But think carefully before you limit the scope of your attorney’s authority. If you become incapable of making financial decisions and your attorney does not have full authority, it may be necessary for your attorney, a family member, friend or the Public Guardian and Trustee to be appointed as your guardian in order to manage the balance of your property. In that case, a management plan must be filed and security may be required.

Also, an *unlimited* continuing power of attorney allows the attorney to end the involvement of the Public Guardian and Trustee (PGT) if the PGT is appointed as statutory guardian of property.

You can put other types of conditions and restrictions in your power of attorney if you wish. Some examples of such conditions and restrictions are:

- requiring your attorney to consult with specific people (e.g. family members, financial advisors) before certain decisions are made;
- specifying the types of investments your attorney may or may not make;
- requiring your attorney to give priority to certain people in making loans or gifts on your behalf;
- specifying how disagreements will be resolved if you have named more than one attorney.

These are just some examples of the types of conditions and restrictions you may want to think about. But remember, you are not required to put anything in this section.

Part 6:

DATE OF EFFECTIVENESS

This document will give your attorney authority **as soon as it is signed and witnessed unless you specify otherwise in this form**. This does not prevent you, however, from looking after your own affairs while you are still capable of doing so. In other words, your attorney will not necessarily begin to manage your financial affairs right away. You and your appointed attorney may agree, for example, to leave this document in a safe place or with a trusted third person, such as your lawyer, accountant or other professional advisor. You can give written directions to the third person about when the power of attorney may be released to the person you have appointed. You would continue to manage your own financial affairs in the meantime.

This approach means that your attorney will not have to go through formal procedures to prove to third parties, such as banks and pension sources, that the power of attorney has come into effect.

Alternatively, you may wish to exercise more control over when the power of attorney may be used. You may state in **Part 5** that the document is only to come into effect on a certain date or when something specific happens. For example, you can say in this document that it won't take effect unless you become mentally incapable of managing your property. If you place this condition in your power of attorney, it is advisable to

give very specific directions about how your mental incapacity is to be determined. You could, for example, say that a letter from your doctor or another trusted person which states that you are no longer mentally capable of managing property is sufficient proof.

If you don't indicate how your mental capacity is to be reviewed in your power of attorney, some of your funds may have to be used to pay for an assessor to judge your capacity. An assessor is a person qualified to make this decision.

If you do wish to restrict the circumstances in which the power of attorney may be used, **write this in Part 5**.

But remember, your property will still belong to you and must be managed by your attorney in your best interests and in accordance with the law.

Part 7:

COMPENSATION

Your attorney(s) is entitled to take payment at a rate set out in the law, unless you say otherwise. The amounts are the same as those allowed to guardians of property. Effective April 1, 2000, the rates permitted to guardians and attorneys of property are 3 percent on monies received and paid out and $\frac{3}{5}$ of 1 percent on the average annual value of the assets. If your attorney acted under your power of attorney before April 1, 2000, the rates permitted were $2\frac{1}{2}$ percent on monies received and paid out and $\frac{2}{5}$ of 1 percent on the average annual value of the assets.

If there is more than one attorney, they will have to share the permitted amount.

If you want to prohibit your attorney(s) from taking any payment or you want to set a specific amount yourself (such as a percentage of your income or a fixed yearly amount), you can do this by writing your instructions in **Part 5** of the form.

If no specific instruction is made in your power of attorney, your attorney may use his/her discretion in accepting compensation allowed for by the law.

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Part 8:

YOUR SIGNATURE

Read each page of this form over carefully before you sign it. [Note: Those who are providing assistance to someone who cannot read this form should see "Additional Guideline" below.]

Before you sign, be sure that:

1. You understand the power your attorney will have and when the document will become effective.
 2. You trust your attorney to act in your best interests.
 3. You are signing this document of your own free will and not because of pressure from anyone else.
 4. You have carefully considered obtaining advice from a lawyer or other trusted advisor.
- You must sign in front of two witnesses as described in **Part 9** of the guidelines.

If you are sure that the form says what you want it to say, sign your name in **Part 8** of the form.

After you have signed the form, print or type the date and your address in the appropriate space.

Part 9:

WITNESS SIGNATURES

The law requires that two people witness your signature. Both of the witnesses must be present together when you sign.

Certain people are not allowed to sign as your witnesses; these people are listed in **Part 9** of the forms.

After you have signed, the witnesses should each sign their names in **Part 9** of the form, in your presence and in the presence of each other.

Additional Guidelines

What to do if the person making this document cannot read:

Someone should read the complete form to the person giving the power of attorney in the presence of both witnesses.

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Then, if satisfied that the person understood it, the witnesses should insert and complete the following clause on the form above the line where they sign:
"This continuing power of attorney for property was signed by

(name of the person giving the power of attorney)
after it was read to him/her in our presence and he/she appeared to understand it and approve it"

What to do with this form after it is signed:

You may wish to have it reviewed by an expert advisor. If it is not completed properly, it may not be valid. It is advisable to tell your family, lawyer, and any financial institutions you deal with the name, address and telephone number of your attorney(s). Keep them updated regarding any change in your attorney's address or telephone number.

Please do not return this completed form to the Public Guardian and Trustee's Office.

It is not necessary to register your continuing power of attorney for property anywhere.

We recommend that after you complete this document, you take a copy to your bank(s) so that they understand your wishes and have it on record. If this document is properly completed and you make it of your own free will when you are mentally capable the bank must recognise it. But they may have questions and it is best to have those resolved before your attorney needs to use the document. You may give the original document to your attorney(s), leave it with a trusted person other than your attorney to hold it for safekeeping (with instructions about when it may be released), or keep it in a safe place where the attorney(s) can locate it quickly if necessary.

It is a good idea to keep at least one photocopy of the document. If possible, keep it with you, with the address and telephone number of your attorney(s).

Revoking this Power of Attorney:

You have the right to revoke (cancel) this power of attorney at any time as long as you are capable. If you decide to revoke this document, you must write the revocation down on paper, sign and date it, and have it witnessed in the same way as the power of attorney (i.e. two witnesses, etc). Notify your attorney, financial institutions and all the people you told about your power of attorney.

Continuing Power of Attorney for Property

(Made in accordance with the *Substitute Decisions Act, 1992*)

1. I, _____ revoke any previous continuing power of attorney
(*Print or type your full name here.*)
for property made by me and **APPOINT:** _____

_____ to be my attorney(s) for property.
(*Print or type the name of the person or persons you appoint here.*)

2. If you have named more than one attorney and you want them to have the authority to act separately, insert the words "jointly and severally" here: _____
(*This may be left blank.*)

3. If the person(s) I have appointed, or any one of them, cannot or will not be my attorney because of refusal, resignation, death, mental incapacity, or removal by the court, **I SUBSTITUTE:**
(*This may be left blank.*)

_____ to act as my attorney for property with the same authority as the person he or she is replacing.

4. I AUTHORIZE my attorney(s) for property to do on my behalf anything in respect of property that I could do if capable of managing property, except make a Will, subject to the law and to any conditions or restrictions contained in this document. I confirm that he/she may do so even if I am mentally incapable.

5. CONDITIONS AND RESTRICTIONS

Attach, sign, and date additional pages if required. (*This part may be left blank.*)

6. DATE OF EFFECTIVENESS

Unless otherwise stated in this document, this continuing power of attorney will come into effect on the date it is signed and witnessed.

7. COMPENSATION

Unless otherwise stated in this document, I authorize my attorney(s) to take annual compensation from my property in accordance with the fee scale prescribed by regulation for the compensation of attorneys for property made pursuant to Section 90 of the *Substitute Decisions Act, 1992*.

8. SIGNATURE: _____ **DATE:** _____
(Sign your name in the presence of two witnesses.)

ADDRESS: _____
(Insert your full current address here.)

9. WITNESS SIGNATURE

[Note: The following people cannot be witnesses: the attorney or his or her spouse or partner; the spouse, partner, or child of the person making the document, or someone that the person treats as his or her child; a person whose property is under guardianship or who has a guardian of the person; a person under the age of 18.]

Witness #1: Signature: _____ Print Name: _____

Address: _____

_____ Date: _____

Witness #2: Signature: _____ Print Name: _____

Address: _____

_____ Date: _____

Power of Attorney for Personal Care

This booklet contains step by step instructions for completing the enclosed Power of Attorney for Personal Care form.

(Made in accordance with the Substitute Decisions Act, 1992)

Decisions About Personal Care

If you become mentally incapable, who will decide where you will live? How you will dress? What you will eat? What health care you will receive? How your safety will be assured? Under the *Substitute Decisions Act, 1992*, the person you choose as your attorney for personal care will make these decisions for you.

This is not the only form you can use to make your power of attorney for personal care. If you wish, you may use another form or make your own, but if you do this, make sure that it meets the legal requirements of the *Substitute Decisions Act, 1992*.

The *Substitute Decisions Act, 1992* allows you to appoint someone you trust, in advance, to make decisions for you if you become mentally incapable. You may use this form to give a person of your choice the authority to make decisions about your PERSONAL CARE should you become mentally incapable. Decisions about personal care involve things such as where you live, what you eat, and the kind of medical treatment you receive. The person you appoint is called your "attorney for personal care". You may appoint more than one attorney if you wish.

To appoint an attorney for personal care, you must be 16 years of age or more and have the mental ability to know whether your attorney truly cares about you and that he or she may make personal care decisions for you if necessary.

You may give your attorney special instructions about the particular kind of care you want - or don't want - in certain situations. If you wish to give

Remember, this form does NOT allow decisions to be made about your property or finances. If you want to appoint an attorney for your financial decisions you can make a separate document called a "Continuing Power of Attorney for Property."

instructions, there is a space on the form where you can write them down.

Remember, you are not required to appoint an attorney for personal care. This is **your** choice.

Giving a power of attorney is a very serious matter. Your attorney may become responsible for profoundly important decisions about your well-being and quality of life. If you decide to appoint an attorney for personal care, it is important that you do so of your own free will, without pressure from anyone else.

Before you decide, you may want to talk with your family or close friends. Although you are not required to consult a lawyer in order to make a legally binding power of attorney, it is a good idea to do so. Consulting with other expert advisors is also a good idea, providing they are impartial and concerned only with your best interests.

It is important to know that by making this power of attorney, you revoke (cancel) any other power of attorney for personal care that you *have* made before. If you have made such a power of attorney before and you *don't* want to revoke it, you should consult with a lawyer so that the necessary changes may be made to this form.

This document includes guidelines designed to help you complete this power of attorney. They do not cover every option available in the *Substitute Decisions Act, 1992*. They are not legal advice. Some legal terminology from the statute has been described in simpler words to make it easier to understand. The guidelines also point out some of the reasons why you may or may not wish to make certain choices. But remember, all decisions are up to you.

Refer to the enclosed Power of Attorney for Personal Care form as you review the following instructions.

Part 1:

APPOINTING YOUR ATTORNEY

Read this part carefully before you complete this form.

Decide who you want to appoint as your attorney for personal care – a family member or close friend, for example. (The word “attorney” does not mean “lawyer.”)

The person you appoint should be someone you know very well and whom you trust completely with your personal decisions.

Talk to that person and make sure that he or she is willing to be your attorney.

The person you appoint must be 16 years of age or more.

Certain people are not allowed to be your attorney.

Do not appoint anyone who provides you with “health care or residential, social, training, or support services for compensation” unless that person is also your spouse, partner, or relative.

For example, do not name any of the following people if they are paid (by you or someone else) to provide services to you *unless* that person is also related to you or is your spouse or partner:

- your landlord;
- any person who provides care for you in the place where you live;
- your social worker, counsellor, teacher;
- your doctor, nurse, therapist, or other health care provider;
- your homemaker or attendant.

You can name more than one person to be your attorney for personal care. You are not required to do so.

If there is more than one person you want involved in your personal care decisions, you may wish to consider appointing more than one attorney. On the other hand, you may decide not to name more than one attorney if you are concerned about the

possibility of disagreements, or if you believe that it would be too difficult for your caregivers to deal with more than one person. Or, you could name one person as your attorney and another person as a substitute or backup, who could step in if your first choice resigns, gets sick or dies. But if you name two people to be your attorneys and do not say how they should make your decisions or who should make which types of decisions, the law says they must make all your decisions together.

You are allowed to appoint different people for different categories of decision-making. For example, you could appoint one person to make your health care decisions and someone else to make your other personal decisions (e.g. housing, food). If you do this, write the name of each person and the category of personal care decisions to which they are restricted (e.g. housing, nutrition, health, safety, hygiene or clothing) in **Part 5** of the form.

If you decide that your attorneys are going to make decisions together, it is a good idea to specify how disagreements should be resolved. You might say that in a case of conflict, one attorney’s decision will override the other’s. Otherwise, your attorneys might have to go to Court and the judge will have to decide.

Please note that you cannot appoint the Public Guardian and Trustee (PGT) as your attorney for personal care unless the PGT agrees in advance in writing to act as attorney for you.

Once you have decided who you want to appoint as your attorney(s), write your name and the attorney’s name in the space provided.

Part 2:

JOINT OR SEPARATE ATTORNEYS

(Fill in this part **only** if you have named more than one attorney and you want your attorneys to be able to make decisions separately, that is, without having to act together). If you have appointed more than one attorney in this form, **the law will require them to make each decision together unless you specifically give them permission to act separately.** You can give permission to act separately by writing it down in this part of the form. If you don't do this, your attorneys will be required to act together all the time.

There are some good reasons for giving your attorneys the flexibility to make decisions separately. Think, for example, about what would happen if one of your attorneys was temporarily unavailable because of sickness, vacation, or some other reason.

On the other hand, you may decide not to give this permission if you want to ensure that there is always a "double-check" regarding decisions. You may also wish to avoid the risk of inconsistent decisions that may occur as a result of attorneys acting separately.

If you have named more than one attorney and you want them to be authorized to make decisions separately from one another, write the words "jointly and severally" in the space provided in **Part 2**. ("Jointly and severally" is a legal term which means "together and separately.")

Part 3:

SUBSTITUTE ATTORNEY (This part is optional.)

Your appointed attorney may not be willing or able to act on your behalf when the time comes. Or something may happen after your attorney has begun to make decisions on your behalf that prevents him or her from continuing to act for you. In either case, you could be left with no one to make important decisions about your care. So you may wish to consider naming a substitute attorney.

This is especially important if you have named only one attorney. If you have named more than one attorney, there is less reason to be concerned because the remaining attorney can usually carry on if something happens to the other. You may still want to name a substitute, however, to replace the one who cannot act. There is no guarantee that something will not happen to your remaining attorney. Or you may feel strongly that there should always be more than one person involved in your decision-making.

Your substitute attorney will have the same authority and powers as the attorney he or she replaces.

If you decide to appoint a substitute attorney, you should think carefully about who to appoint. The restrictions on who is allowed to be your attorney, described in **Part 1**, apply to your substitute.

To name a substitute attorney, complete **Part 3**.

Part 4:

AUTHORITY OF ATTORNEY(S)

This part of the form is very important. It tells your attorney, and your caregivers, the categories of personal care that your attorney is allowed to decide about if you become mentally incapable.

This part gives your attorney(s) the authority to make decisions about **any** category of personal care for which you are mentally incapable. This may include decisions about your health care, housing, safety, hygiene, clothing and nutrition. Your attorney will have first right to give or refuse consent to your medical treatment if you cannot do so, unless the court has appointed a guardian of the person.

It is important to understand that no matter what authority is given to your attorney in this document, he or she is only allowed to make decisions about those aspects of your personal care that you cannot make yourself. For example, if you become mentally incapable of making decisions about health care but can still make decisions about other personal care matters, such as housing or safety, you would still have the right to make your own decisions in these areas.

Although you may limit your attorney(s) to only specific categories of personal care (e.g. health care, shelter, nutrition, clothing, safety or hygiene) by writing restrictions in **Part 5**, think carefully before you do so. If you become incapable of making decisions in a particular area and your attorney does not have authority to decide for you, it may be necessary for the Court to appoint a guardian.

Part 5:

INSTRUCTIONS, CONDITIONS AND RESTRICTIONS (This part is optional.)

You may, if you wish, give your attorney(s) instructions about specific decisions that you want made in certain circumstances. This is different from saying what areas of authority your attorney has. You have already done this in **Part 4**.

Giving instructions means telling your attorney what decision to make in a particular situation. For example, you have given your attorney the right to make decisions about where you live but you may want your attorney to keep you in your own home as long as possible. Or you may want to ensure that your attorney observes your religious beliefs when deciding about your food.

You can be very specific in your instructions or give your attorney some general guidelines to follow when making decisions.

The most common type of instruction is about health care. You may be familiar with the idea of a "Living Will" in which a person may decline certain treatment, such as artificial life supports, in the event of a terminal illness. This is **one** type of instruction that you can make. But remember, you can give instructions about *any* category of personal care in which your attorney has decision-making authority.

Your attorney for personal care can only make decisions about your personal care if you have become mentally incapable of making decisions yourself. If you choose, you can require that your attorney get confirmation of your incapacity before he or she acts and specify how you want this confirmation to be obtained.

If you wish to give your attorney instructions, here are some things you may want to consider doing:

- Put your instructions in words your attorney(s) can understand.
- If you give specific instructions, be very clear as to the type of situation in which the instruction must be followed.

- Be realistic in your choices
- Talk to your attorney(s) about your instructions to make sure that he or she really understands what you are saying. It is helpful if you explain the values and beliefs which underlie your instructions.
- If you decide to give instructions about health care, talk to your health care provider about your current health and the kind of medical treatment you might face in the future. Be aware that medical language can be very specific, so make sure that what you write actually expresses what you want to say.

Some organizations and individuals offer very detailed forms in which you can record your choices about medical treatment. If you have already completed such a form you may wish to attach it to this power of attorney. If you do attach such a document, it would be wise to say, in this part of the form, what the document is and the date it was signed. Initialing each page of the document you attach is also a good idea.

The law requires that your instructions must be followed by your attorney unless it is impossible for him or her to do so. For example, your attorney cannot be required to do something which is against the law.

But remember, this section is optional. You may choose not to write any instructions to your attorney in this form. It's up to you. Your attorney must still follow any other instructions or wishes you may express about your care while you are capable of making such choices. But you should be sure to communicate these wishes to your attorney.

If you do not provide any instructions, your attorney(s) must make decisions according to what he or she believes is in your best interest at the time.

You may also place conditions or restrictions on your attorney's authority. For example, you might want your attorney to consult with specific people (such as family members or your religious advisor) before decisions are made. If you have named more than one attorney, you may want to specify whose decision will be followed if there is a disagreement, or you may restrict the category of personal care decisions that each attorney can make.

Special Powers:

Note: These guidelines do not cover instructions authorizing the attorney to exercise special additional powers such as a forced assessment or admission to a psychiatric facility. These require special procedures and are not covered in this package. You should seek professional advice if you need more information.

Organ Donation:

Note: If you would like to consent to the donation of your organs and tissue in the event of your death, you should register as a donor at: www.beadonor.ca, or in person at any ServiceOntario location. Talk to your loved ones about your decision and inform them of your intentions, as they will be asked to give final consent in the event of your death. For more information about organ and tissue donation, please visit: <http://www.giftoflife.on.ca>. Or by contacting the Trillium Gift of Life Network at 1-800-263-2833.

Part 6:

YOUR SIGNATURE

Read each page of the form over carefully before you sign it. [*Note: Those who are providing assistance to someone who cannot read this form should see "Additional Guidelines."*]

Before you sign, be sure that:

1. You understand the authority your attorney may have.
2. You trust your attorney to act responsibly and follow any instructions you may provide.
3. You are giving this power of attorney of your own free will.
4. You have carefully considered obtaining advice from a lawyer and your health care providers.

You must sign in front of two witnesses as described in **Part 7**.

If you are sure that the form says what you want it to say, sign your name in the space provided. After you have signed the form, print or type the date and your address in the appropriate space.

Part 7:

WITNESS SIGNATURES

The law requires that two people witness your signature.

Both of the witnesses must be present together when you sign.

Certain people are not allowed to sign as your witnesses; these people are listed in Part 7 of the form.

After you have signed, the witnesses should each sign their names in **Part 7** of the form, in your presence and the presence of each other.

Additional Guidelines

What to do if the person making this document cannot read:

Someone should read the complete form to the person giving the power of attorney in the presence of both witnesses.

Then, if satisfied that the person understood it, the witnesses should insert and complete the following clause on the form above the line where they sign:

"This Power of Attorney for Personal Care was signed by

*(name of the person giving the power of attorney)
after it was read to him/her in our presence and
he/she appeared to understand it and approve it."*

What to do with this form after it is signed:

You may wish to have the form reviewed by an expert advisor. If the form is not completed properly, it may not be valid.

It is advisable to tell your family, lawyer, health care providers, and anyone who provides you with care, the name, address and telephone number of your attorney(s). Keep them updated regarding any change in your attorney's address or telephone number.

NOT FOR SALE

You may give the original document to your attorney(s) or keep it in a safe place where the attorney(s) can locate it quickly if necessary.

Do not return this completed form to the Office of the Public Guardian and Trustee.


It is a good idea to keep at least one photocopy of the document. If possible, keep it with you, with the current address and telephone number of your attorney(s).

Revoking this Power of Attorney:

You have the right to revoke (cancel) this power of attorney at any time as long as you are capable.

If you decide to revoke this document, you must write the revocation down on paper, sign and date it, and have it witnessed in the same way as the power of attorney (two witnesses, etc.). Notify your attorney, caregivers and all the people you told about your power of attorney.

Detach Card: You may wish to complete and detach this card and keep it on your person for easy access in case the information is needed in an emergency.

 Ontario . Office of the Public Guardian and Trustee

IMPORTANT INFORMATION

(This is not a power of attorney.)

I _____ have appointed the following as my power(s) of attorney for:

PROPERTY

Name: _____
Address: _____
Telephone: _____
Date appointed: _____

PERSONAL CARE

Same as above, or

Name: _____
Address: _____
Telephone: _____
Date appointed: _____



Power of Attorney for Personal Care

(Made in accordance with the Substitute Decisions Act, 1992)

1. I, _____
(Print or type your full name here)

care made by me and **APPOINT:** _____
(Print or type the name of the person or persons you appoint here)

to be my attorney(s) for personal care in accordance with the *Substitute Decisions Act, 1992*.

[**Note:** *A person who provides health care, residential, social, training, or support services to the person giving this power of attorney for compensation may not act as his or her attorney unless that person is also his or her spouse, partner, or relative.*]

2. If you have named more than one attorney and you want them to have the authority to act separately, insert the words "jointly and severally" here:

(This may be left blank)

3. If the person(s) I have appointed, or any one of them, cannot or will not be my attorney because of refusal, resignation, death, mental incapacity, or removal by the Court, **I SUBSTITUTE:**

(This may be left blank)

to act as my attorney for personal care in the same manner and subject to the same authority as the person he or she is replacing.

4. I give my attorney(s) the **AUTHORITY** to make any personal care decision for me that I am mentally incapable of making for myself, including the giving or refusing of consent to any matter to which the *Health Care Consent Act, 1996*, applies, subject to the *Substitute Decisions Act, 1992*, and any instructions, conditions or restrictions contained in this form.

NOT FOR SALE

5. INSTRUCTIONS, CONDITIONS and RESTRICTIONS

Attach, sign, and date additional pages if required. *(This part may be left blank.)*

6. SIGNATURE: _____ **DATE:** _____
(Sign your name here, in the presence of two witnesses.)

ADDRESS: _____
(Insert your current address here.)

7. WITNESS SIGNATURES

[Note: The following people cannot be witnesses: the attorney or his or her spouse or partner; the spouse, partner, or child of the person making the document, or someone that the person treats as his or her child; a person whose property is under guardianship or who has a guardian of the person; a person under the age of 18.]

Witness #1: Signature: _____ **Print Name:** _____

Address: _____

_____ **Date:** _____

Witness #2: Signature: _____ **Print Name:** _____

Address: _____

_____ **Date:** _____

NOT FOR SALE

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