

Powers of Attorney

This booklet contains forms and guidelines for

Continuing Power of Attorney for Property

and

Power of Attorney for Personal Care



Ministry of the Attorney General

NOT FOR SALE

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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 that 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, also known as Capacity Assessors

Assessors or Capacity 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 one 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 statute (the *Substitute Decisions Act, 1992*) 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 a person, before becoming incapable, to act on their behalf. A guardian is appointed through a legal process after a person's incapacity.

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 their income, spending, assets, and debts. For example, it could include budgeting expenses and paying bills, doing tax returns, safeguarding valuables, selling real estate, making or defending legal claims, or making loans.

Public Guardian and Trustee

The Public Guardian and Trustee’s (PGT) 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.

Sometimes the PGT is appointed guardian of property automatically by law. When this happens the PGT tries to locate a suitable person to manage the incapable person’s property instead of the PGT.

Statutory Guardian

A statutory guardian is a person who is appointed to act on another person’s behalf for property without going to court. A statutory guardian can be the PGT or someone approved by the PGT to replace the PGT as statutory guardian. Statutory guardianship applies only to property or finances. There is no statutory guardianship for personal care. A guardian for personal care must be appointed by the court.

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? Who will make a legal claim on your behalf? The person you choose as your “attorney” for property will take care of these things for you. 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 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.
- Consult a lawyer. 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.

- Consult with other expert advisors; this 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. If you want to reference a legal term, check back in the definitions section.

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.

NOTE: 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.”

To make a valid power of attorney for property, 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 their 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 they are 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.

It is a good idea to talk to the person you wish to appoint and make sure that they are 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** power 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 they 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.

On the other hand, you may choose to only name one attorney if you're concerned about the possibility of disagreements between your attorneys or if you believe it may be difficult for others to deal with more than one person concerning your finances.

You may also consider whether to name another person (or persons) to be the substitute or backup, who would step in to act if your first named attorney(s) resign, get ill, or die.

It's important to understand that it's **your** choice whether to name one, or more than one, attorney(s) and/or whether to appoint a substitute attorney.

Please note that you cannot appoint the 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.

Part 2: JOINT OR SEPARATE ATTORNEYS

(This part is optional.)

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.

If you name more than one person as your attorney for property, you may decide whether they will share the job or divide their responsibilities.

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 make decisions 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.

To summarize, 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.)

Fill out this part **only** if you want to name another person (or persons) to be the substitute or backup, who would step in to act if your first named attorney(s) resigns, gets ill, or dies.

You may wish to consider naming a substitute attorney:

- 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.
- This could mean that you are left with no one to manage your financial affairs.
- This is especially important if you have named only one attorney in Part 1. 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, as there is no guarantee that something will not happen to your remaining attorney.
- Your substitute attorney will have the same authority and powers as the attorney they replace.

It's important to understand that it's **your** choice whether to name a substitute attorney.

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 PGT 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 a security bond (similar to insurance) may be required.

Also, a continuing power of attorney that gives your attorney authority over all of your property allows your attorney to end the involvement of the Public Guardian and Trustee as your 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.

Some ideas to consider:

- You may decide, 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 should consider telling your attorney where it is, because they will need it in order to act on your behalf.
- 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.
- Be careful to make sure the condition could be fulfilled when the time is right. For example, don't specifically name your family doctor unless you're confident they will be willing and able to provide a written opinion on your mental capacity, when needed in the future.
- If your power of attorney only takes effect when you become mentally incapable of managing your property and you don't indicate how your mental capacity is to be determined, an assessment by a capacity assessor or a doctor in a psychiatric facility will be required. If you do wish to restrict the circumstances in which the power of attorney may be used, **write this in Part 5**.

But remember, whatever you decide to do here, your property will still belong to you and must be managed by your attorney with honesty, integrity and good faith, 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 in your power of attorney:

- 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 3/5 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.

Part 8: YOUR SIGNATURE

Read each page of this form over carefully before you sign it. ***[Note: Those who are helping someone who cannot read this form should see “Additional Guidelines” below.]***

Before you sign, be sure that you:

1. Understand the power your attorney will have, and when the document will become effective.
2. Trust your attorney to act in your best interests.
3. Are signing this document of your own free will and not because of pressure from anyone else.
4. Have carefully considered obtaining advice from a lawyer or other trusted advisor.

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

NOTE: This form must be printed and signed to be valid.

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.

Virtual witnessing using technology that allows everyone to see and hear each other at the same time may be available. As this option requires the participation of a lawyer or paralegal, please contact a legal professional for details. If you need to find a lawyer or paralegal contact the Law Society of Ontario at <https://lsrs.lso.ca/lsrs/welcome>.

Additional Guidelines

What to do if the person making the Power of Attorney cannot read:

- Someone should read the complete form word for word 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 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 the Power of Attorney 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.
- It is recommended that 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 should 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).
- 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.

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 that you have revoked (cancelled) it.

Continuing Power of Attorney for Property

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

NOTE: This form must be printed and signed to be valid.

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 they are 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 40 of the *Substitute Decisions Act, 1992*.

8. SIGNATURE: _____

(Sign your name here, in the presence of two witnesses.)

DATE (YYYY/MM/DD): _____

ADDRESS: _____

(Insert your full current address here.)

9. WITNESS SIGNATURES

Note: The following people cannot be witnesses: the attorney or their spouse or partner; the spouse, partner, or child of the person making the document, or someone that the person treats as their 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 (yyyy/mm/dd): _____

Witness #2:

Signature: _____

Print Name: _____

Address: _____

Date (yyyy/mm/dd): _____

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 they 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 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.
- Talk with a lawyer. 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. Keep in mind:

- They do not cover every option available in the *Substitute Decisions Act, 1992*.
- The guidelines described in this document are not legal advice.
- Some legal terminology 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.

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.”

Part 1: APPOINTING YOUR ATTORNEY

Read this part carefully before you complete this form. Things to keep in mind:

- 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 must be 16 years of age or more.
- **The person you appoint should be someone you know very well and whom you trust completely with your personal decisions.**

- It's a good idea to talk to that person and make sure that they are willing to be your attorney for personal care.

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. Some things to consider:

- 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.
- 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.

You may also consider whether to name another person (or persons) to be the substitute or backup, who would step in to act if your first named attorney(s) resign, get ill, or die.

It's important to understand that it's **your** choice whether to name one, or more than one, attorney(s) and/or whether to appoint a substitute attorney.

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(s) in the space provided.

Part 2: JOINT OR SEPARATE ATTORNEYS

(This part is optional)

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. Consider the following:

- 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.)

You may consider whether to name another person (or persons) to be the substitute

or backup, who would step in to act if your first named attorney(s) resign, get ill, or die.

Fill in this part **only** if you want to name a substitute attorney.

You may wish to consider this:

- 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 personal care.

- This is especially important if you have named only one attorney in Part 1. 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.

Your substitute attorney will have the same authority and powers as the attorney they replace.

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.

It's important to understand that it's **your** choice whether to name a substitute attorney.

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

Part 4: AUTHORITY OF ATTORNEY(S)

This part of the form is very important. Consider the following:

- 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.
- The categories of personal care are: 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, they are 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 (i.e., 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 terms “advance directive” or “living will”. An advance directive or living will is not the same as a power of attorney for personal care. The power of attorney is a legal document in which you name a specific person to make decisions on your behalf if you are incapable. An advance directive or living will is an expression of your treatment and personal care wishes only.
- You can include these treatment and personal care wishes, including providing instructions regarding artificial life support, in your power of attorney for personal care so that you can be sure your attorney is aware of them.
- It is very important that your attorney is aware of your wishes and instructions. These can be set out through your Power of Attorney for Personal Care, advance directive, living will, other written communication or verbally. Your attorney must follow your most recent capable wishes, however expressed.

- 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 they act 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.
- Talk to your attorney(s) about your instructions to make sure that they really understand what you are saying. It is helpful if you explain the values and beliefs which form the basis of your instructions.
- If you decide to give instructions about health care, talk to your health care provider about your current health, the kind of medical treatment you might face in the future, and your quality of life. Be aware that medical language can be very specific, so make sure that what you write actually expresses what you want to say, especially regarding end of life decisions.

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 the most recent instructions you made while capable, **whether written or not**, 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 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 have not provided any instructions, your attorney(s) must make decisions according to what they believe 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 they decide.
- 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:

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:

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: www.giftoflife.on.ca or contact the Trillium Gift of Life Network at 1-800-263-2833.

Part 6: YOURSIGNATURE

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.

NOTE: This form must be printed and signed to be valid.

Part 7: WITNESS SIGNATURES

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

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

Virtual witnessing using technology that allows everyone to see and hear each other at the same time may be available. As this option requires the participation of a lawyer or paralegal, please contact a legal professional for details. If you need to find a lawyer or paralegal contact the Law Society of Ontario at <https://lsrs.lso.ca/lsrs/welcome>.

Additional Guidelines

What to do if the person making the Power of Attorney for personal care cannot read: Someone should read the complete form word for word 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 the Power of Attorney for personal care after it is signed:


- You may wish to have the Power of Attorney for personal care 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.
- 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 (yyyy/mm/dd): _____

PERSONAL CARE

Same as above, or

Name: _____

Address: _____

Telephone: _____

Date appointed (yyyy/mm/dd) : _____

Power of Attorney for Personal Care

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

NOTE: This form must be printed and signed to be valid.

1. I, _____ revoke any
(Print or type your full name here)
previous power of attorney for personal 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 their attorney unless that person is also their 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 they are 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.

5. INSTRUCTIONS, CONDITIONS AND RESTRICTIONS

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

6. YOUR SIGNATURE

SIGNATURE: _____

(Sign your name here, in the presence of two witnesses.)

DATE (YYYY/MM/DD) : _____

ADDRESS: _____

(Insert your full current address here.)

7. WITNESS SIGNATURES

[Note: *The following people cannot be witnesses: the attorney or their spouse or partner; the spouse, partner, or child of the person making the document, or someone that the person treats as their 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 (yyyy/mm/dd): _____

Witness #2: Signature: _____

Print Name: _____

Address: _____

Date (yyyy/mm/dd): _____