
Continuing *Power of Attorney* for Property

October 2010

There are three kinds of Power of Attorney in Ontario:

- General Power of Attorney for Property,
- Continuing Power of Attorney for Property, and
- Power of Attorney for Personal Care.

This publication is about **Continuing Power of Attorney for Property**.

[Power of Attorney for Personal Care](#) is discussed in a separate publication, available from Community Legal Education Ontario (CLEO). See the back cover for ordering information.

What is a Power of Attorney?

A Power of Attorney is a legal document that gives someone else the power to act on your behalf. This person is called your “attorney”. In Canada the word “attorney” usually does not mean lawyer, as it does in the USA.

You can give someone a Power of Attorney for Property if you want them to help you manage your finances, or you are worried about becoming unable to manage them. You can also give a Power of Attorney for Property for a limited time. For example, if you plan to be out of the country for a while, you might want someone else to manage your property only while you are away. “Property” includes your money, your home if you own one, and anything else you own.

What powers will my attorney for property have?

Unless you limit your attorney’s authority, they can do almost anything with your property that you could do. However, your attorney *cannot* make or change your will, or give a new Power of Attorney on your behalf.

Your attorney can act for you in financial dealings, such as banking, signing cheques, buying or selling real estate, and buying consumer goods.

A Power of Attorney for Property does not let your attorney make decisions about your personal care. For example, your attorney cannot decide where you will live, or the medical care you will receive. To name someone to make these decisions if the need arises, you must give that person a Power of Attorney for Personal Care.

What is a *General Power of Attorney for Property*?

A General Power of Attorney for Property is a legal document that lets your attorney manage your finances and property only while you are mentally capable. If you become mentally *incapable* of managing your property, the General Power of Attorney for Property ends and your attorney can no longer act for you. This type of Power of Attorney is usually used in business or for short-term temporary reasons. Since the laws about this were changed in 1996, most people who want to make

a Power of Attorney for Property make a Continuing Power of Attorney for Property instead.

What is a *Continuing Power of Attorney for Property*?

A Continuing Power of Attorney for Property lets your attorney go on acting for you if you become mentally incapable of managing your property. To be valid for this purpose, the document must either be called a Continuing Power of Attorney, or state that it gives your attorney the power to continue acting for you if you become mentally incapable.

I made a Power of Attorney for my property before the law changed. Do I need a new Power of Attorney?

Maybe not. If you made a valid Power of Attorney before the law changed on March 29, 1996, it is probably still valid. However, check that your attorney is still willing and able to act for you if it becomes necessary. Also check that the document says that your attorney can continue to act for you if you become mentally incapable of managing your property.

When does a Continuing Power of Attorney for Property take effect?

It takes effect as soon as it is signed and witnessed, unless you state in the document that you want it to take effect at a later date. For example, if you want it to take effect only if you later become incapable of managing your finances, ask your lawyer to help you make this clear.

Power of Attorney documents are often kept in a safe place to use only in the event of mental incapacity at a later date.

Can anyone give a Continuing Power of Attorney for Property?

You can give a valid Continuing Power of Attorney for Property if you are at least 18 years of age and mentally capable of doing so.

Mental capacity in this case means you must:

- ✓ know what property you have and its approximate value,

- ✓ be aware of your obligations to the people who depend on you financially,
- ✓ know what you are giving your attorney the authority to do,
- ✓ know that your attorney is required to account for the decisions they make about your property,
- ✓ know that, as long as you are mentally capable, you can revoke (cancel) this Power of Attorney,
- ✓ understand that if your attorney does not manage your property well its value may decrease, and
- ✓ understand that there is always a chance that your attorney could misuse their authority.

Note: Even if you are incapable of managing your property, you may be capable of giving a Continuing Power of Attorney. For example, you may not remember how much your monthly pension cheque is, but you may know that you get one and that you want your daughter to handle it.

Can I appoint anyone as my attorney?

You can appoint anyone who is 18 years of age or older. It is important to give careful thought to who you choose. Is the person trustworthy and good at handling money? Are they willing to act as your attorney? Do they expect to be paid? The answers to these and other questions may help you choose your attorney.

It is a good idea to consult a lawyer before making a final decision about your attorney.

Can I appoint more than one attorney?

Yes. But if you name more than one person as your attorney, all your attorneys will have to agree before a decision can be made on your behalf, unless you state in the document that they can make decisions separately. When two or more attorneys must agree on a decision, they are said to act “jointly”. When you state that they can make decisions together *or* separately, they are said to act “jointly and severally”.

Example: Suppose you have been in an accident and you are in a coma. You are now mentally incapable of paying your bills and rent. Your Continuing Power of Attorney for Property names your two friends, Paul and Susan, as your attorneys for all your property decisions. But now Paul is away and cannot be reached. If your Power of Attorney says that Paul and Susan must make decisions *jointly*, Susan cannot act alone.

However, if your Power of Attorney says they can make decisions both *jointly and severally*, Susan can act for you right away. Even if Paul and Susan are both available, one or the other can still act alone. Or they can discuss the situation and make a decision together on your behalf.

If you do want more than one attorney, think carefully about whether your attorneys should act jointly or not. Make your decision clear in your Power of Attorney document.

What if my attorney cannot or will not act for me when the time comes?

When you make your Continuing Power of Attorney for Property, you can name a “substitute attorney”. This person can act for you if your first attorney or attorneys are not willing or not able to act. The substitute attorney will have the same powers as the original attorneys.

You can also name more than one substitute attorney.

Will my attorney get paid?

Your attorney is entitled to be paid unless you state otherwise in your Continuing Power of Attorney for Property. Consult a lawyer about the payment your attorney can receive.

If you want to set the amount yourself or you do not want your attorney to be paid at all, write this in the document.

Where can I get a form for the Continuing Power of Attorney for Property?

A lawyer can prepare a form with you. Or you can use the form published by the Office of the Public Guardian and Trustee. To order a copy, call **416-314-2800**, or toll-free **1-800-366-0335**. You can also download it by going to this web site: www.attorneygeneral.jus.gov.on.ca.

Whether you use the form provided by the Office of the Public Guardian and Trustee or another form, it is a good idea to consult a lawyer before appointing an attorney.

Do I need witnesses when I sign the form?

Yes. The law says you need two witnesses. Both must be with you when you sign and they must also sign. The following people *cannot* be witnesses:

- ✗ your spouse, partner, child, or someone you treat as your child,
- ✗ your attorney or your attorney's spouse or partner,

- ✘ anyone under the age of 18,
- ✘ anyone who has a “Guardian of Property” appointed for them by a court because they are not mentally capable of managing their property,
- ✘ anyone who has a “Guardian of the Person” appointed for them by a court because they are not mentally capable of making their own personal care decisions.

Definitions

A person is your “spouse” if any of the following things are true:

- you are married to them,
- you have lived together common-law for at least a year,
- you have a written cohabitation agreement with them, or
- you have a child together.

A person is your “partner” if you have lived together for at least a year and you have a close personal relationship of primary importance to both of you.

Note: These definitions apply to Continuing Power of Attorney for Property. “Spouse” and “partner” can have different meanings in other areas of law.

Can I cancel my Power of Attorney after I have signed it?

Yes. As long as you are mentally capable of making a Continuing Power of Attorney for Property, you can take it back (cancel or revoke it). To do so, state in writing that you revoke it. Two people must witness you signing this statement. Both people must be with you when you sign. The same people who are not allowed to be witnesses for a Power of Attorney are also not allowed to be witnesses for this statement. There is no special form for this statement, which is referred to as a “revocation”.

It is a good idea to give a copy of the revocation to anyone who has seen or has a copy of the Power of Attorney. If you can, get the original Power of Attorney back and destroy it.

If you do revoke it, inform everyone concerned with your income or property, such as your bank manager or pension plan administrator. Give them a copy of the revocation. If you own a home or other real estate, have a lawyer register the revocation on the title to the property. This will notify anyone interested in buying the property, or anyone holding a mortgage on it, that the Continuing Power of Attorney for Property has been revoked.

Note: If you make a new Continuing Power of Attorney for Property, all other existing Continuing Powers of Attorney for Property that you have made before are automatically cancelled, unless the new one says otherwise. If you do not want this to happen, talk to a lawyer about the wording of the new document.

When does my Continuing Power of Attorney for Property end?

It ends when you die, or:

- when your attorney dies, becomes incapable, or resigns, unless you named more than one attorney or you named a substitute,

- when a court appoints a Guardian of the Person for you,
- when you sign a new Continuing Power of Attorney for Property, unless the new one says that you want more than one Continuing Power of Attorney for Property, or
- when you revoke the Power of Attorney while you are still mentally capable.

What if I do not have a Continuing Power of Attorney for Property?

If you have not made a Continuing Power of Attorney for Property, and you become mentally incapable of managing your property, one of the following things could happen:

- Some of your property, such as pensions and social benefits, could be managed informally by friends or relatives.
- Someone could go to court and ask to be appointed to formally manage your property as your “Guardian of Property”.

- The Office of the Public Guardian and Trustee could be appointed to manage your property. This is called a “statutory guardianship”. In this case, a close relative can apply to the Public Guardian and Trustee to take over the formal management of your property.

Making a Continuing Power of Attorney for Property lets *you* choose a person you trust to protect your property and interests if the need arises.

Getting legal help

For legal advice or help with a Power of Attorney for Property, contact a lawyer.

Some community legal clinics may be able to give you free legal advice about your Power of Attorney for Property. You can usually find the community legal clinic nearest you by looking under “Legal Aid” or “Lawyer” in your phone book, by checking the Legal Aid Ontario web site at <www.legalaid.on.ca>, or by calling Legal Aid Ontario toll-free at **1-800-668-8258**. In Toronto, call **416-979-1446**.

For more information, contact:

This publication contains general information. It is not a substitute for getting legal advice about your particular situation.

Written by:

Advocacy Centre for the Elderly (ACE) and CLEO (Community Legal Education Ontario / Éducation juridique communautaire Ontario)

Edited and produced by:

CLEO

With funding from:

Legal Aid Ontario and the Department of Justice Canada

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