

Power of Attorney for Personal Care

A **Power of Attorney for Personal Care** is a legal document that gives someone the power to make decisions about your personal care, including your health care. This person is your attorney.

In Canada, attorney does not usually mean lawyer.

Your attorney can make decisions **only** if you become mentally incapable of making those decisions yourself.

Your attorney can make decisions about:

- **personal care**, such as where you live, what you eat, what you wear, your washing and bathing, and keeping you safe
- **health care**, including:
 - agreeing to or refusing health-care treatments
 - moving into a long-term care home
 - getting personal assistance services in a long-term care home or retirement home

Read about giving someone the power to make decisions about money and property in **Continuing Power of Attorney for Property**. Order it for free or read it online at cleo.on.ca/POA-P.

You might also want to make a **will** to say who will get your property when you die.

Should I make a power of attorney?

If you become mentally incapable of making decisions about your personal care, including your health care, someone must make them for you. This is your **substitute decision-maker (SDM)**.

If you have a Power of Attorney for Personal Care, your attorney is your SDM.

Decisions about personal care

If you do not have a power of attorney and become mentally incapable of making decisions about your personal care:

- someone could go to court and ask to become your Guardian of the Person, or
- you might still be able to make a power of attorney if you are mentally capable of doing this. But this does **not** often happen.

Usually, your attorney decides if you are mentally capable to make decisions about your personal care.

But you can name someone in your power of attorney who must **confirm** that you are mentally incapable before your attorney starts making decisions.

This could be your doctor, another health professional, or a friend. Or you could say it must be a certain **type** of professional, such as a social worker, psychologist, or nurse.

If you do not say who will do this, a **capacity assessor** will decide. This is a health professional who is trained to assess if someone is mentally capable.

Decisions about health care

If you become mentally incapable of making decisions about your health care, your health-care providers must get the consent of your SDM before treating you.

Ontario's Health Care Consent Act says who can be an SDM for **some** of these decisions. This includes decisions about health treatment, moving to a long-term care home, and personal assistive services in a long-term care home or retirement home.

Who decides is based on **this order**:

- your Guardian of the Person
- your attorney
- someone appointed by the Consent and Capacity Board
- your spouse or partner (see [page 5](#) for more information)
- your parent or your child
- your brother or sister
- any other relative
- the Office of the Public Guardian and Trustee

Your **SDM** must be:

- at least 16 years old,
- mentally capable,
- available and willing to make decisions for you, and
- not stopped from acting as your SDM by a court order or a separation agreement.

Advance care plans

Your power of attorney can include your wishes or instructions about personal care, including health care. These are often called **advance care plans**.

Your wishes might be to:

- stay in your own home as long as possible
- respect your religion when choosing food
- let doctors use artificial life support

Your wishes are for your attorney or SDM to follow, **not** doctors or medical staff. And they must follow what the law calls your “last prior capable wish”. This might not be what is in your power of attorney.

After you make your power of attorney, you might decide something different. You could tell someone about your new wishes or put them in writing.

If your attorney or SDM does not know your wishes, they must make decisions based on what is in your **best interest**. They must think about your values and beliefs, as well as any risks and benefits.

Can I make a power of attorney?

You must be at least 16 years old and mentally capable. This means that you understand:

- whether your attorney is truly concerned about how you live and are taken care of, and
- that you may need this person to make decisions for you.

You must make the power of attorney without anyone:

- forcing you to, or
- telling you that you must make one to get health care or another service.

A power of attorney is **not** valid if you sign it after you become mentally incapable, or someone else signs it for you.

Who can be my attorney?

Your attorney can be a family member, a close friend, or anyone else you trust. Think about who will:

- be available when you need them
- talk to you about your wishes
- understand your personality, values, and beliefs
- be able to make difficult decisions based on what they think you would want, even if family members disagree

Your attorney for personal care must be mentally capable and at least 16 years of age. They **cannot** be paid to give you health care or certain other services unless they are your spouse, partner, or family member.

Spouse or partner

Someone is your **spouse** if you are married to them. If you are not married, they are your spouse if **any** of the following are true:

- you have been living together for **at least** one year,
- you have been living together for **less than** one year but have a child together, or
- you have a cohabitation agreement.

A **cohabitation agreement** is a domestic contract between partners who are not married. It says how they will deal with issues when they live together or stop living together, or if one of them dies.

A **partner** is someone you have been living with for at least one year. And you have what the law calls a close personal relationship of “primary importance” to both of you.

Spouse and partner can have different meanings in other areas of law.

Can I name more than one attorney?

Yes. You should also say if you want them to make decisions alone or if they must agree.

If your attorneys must all agree on a decision, this is called acting “jointly”. If they can make decisions together or on their own, this is called acting “jointly and severally”.

You can also name one or more **substitute attorneys**. They act if your other attorney or attorneys are not willing or able to.

How do I make a power of attorney?

You can hire a lawyer to make or review your power of attorney.

Or you can use a form from the Office of the Public Guardian and Trustee. To get a copy, call **1-800-366-0335**. For TTY, call **416-314-2687**. Or visit ontario.ca/OPGT.

CLEO’s Guided Pathways has a tool to help you make or cancel a power of attorney. Visit stepstojustice.ca/GP-POA.

You may want to talk to your health-care providers about how to write your health and treatment instructions.

Witnesses

You must have 2 witnesses who see you sign your power of attorney. They must sign it as well. Your witnesses **cannot** be:

- your spouse or partner, your child, or someone you treat as your child
- your attorney or their spouse or partner
- anyone who is under the age of 18

When does a power of attorney take effect?

Your power of attorney takes effect **only** if you are no longer mentally capable of making some or all of your personal care decisions.

You may be capable of making some decisions and not others. For example, you might be able to decide about your bathing and getting dressed, but not about where you live.

Your attorney can **only** make decisions that you are not capable of making yourself.

When does my power of attorney end?

It ends when you die, or when:

- your attorney dies, becomes incapable, or resigns, unless you have more than one attorney or a substitute,
- a court appoints a Guardian of the Person for you,
- you make a new one, unless the new one says that you want more than one, or
- you cancel or revoke it while you are mentally capable.

Can I cancel my power of attorney?

If you are mentally capable of making a power of attorney, you can cancel or revoke it. You do this by making a written statement called a **revocation** or a **Notice of Revocation**.

There is no special form for this. All you have to do is write:

“I revoke my Power of Attorney for Personal Care that is dated [month, day, year] and effective immediately.”

Your revocation must be signed and witnessed in the same way as your power of attorney.

CLEO's Guided Pathways has a tool to help you make or cancel a power of attorney. Visit stepstojustice.ca/GP-POA.

It is a good idea to give a copy of the revocation to anyone who has seen or has a copy of your power of attorney. Destroy the original one if you can.

If you make a new power of attorney, all earlier ones are automatically cancelled, unless the new one says something different. If you do not want this to happen, talk to a lawyer.

Getting legal help

If you have a low income, some **community legal clinics** may be able to give you free advice about powers of attorney or help you make one. To find the clinic near you, visit legalaid.on.ca/legal-clinics. Or call **1-800-668-8258**. For TTY, call **711**.

The **Law Society Referral Service** gives you the name of a lawyer you can speak to for up to 30 minutes for free. Visit findlegalhelp.ca.

Pro Bono Ontario's legal advice hotline can give you up to 30 minutes of free legal advice. Call **1-855-255-7256**. Visit probonoontario.org.

JusticeNet is a non-profit organization that can connect you with a lawyer who charges reduced fees. Visit justicenet.ca.

There are also places like Axess Law that charge **lower fees** for services like creating a power of attorney. Visit axesslaw.com.



Visit stepstojustice.ca for more information about powers of attorney. This is general information for people in Ontario, Canada. It is not intended to be used as legal advice.

Vous pourriez avoir droit à des services en français devant les tribunaux ou auprès d'organismes gouvernementaux. Visitez justicepasapas.ca/droits-linguistiques-des-francophones.