

WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a legal document that grants a person of your choosing the authority to act on your behalf.

The appointed “Attorney” (the person you choose), is given the power to perform specific, or all, financial decisions for you as if he or she were you.

A Power of Attorney must follow the rules outlined in the ***Powers of Attorney Act*** and must be signed by the “donor” (you, the person giving the power) while they are still considered to have full and legally-defined mental capacity.

WHY DO YOU NEED A POWER OF ATTORNEY?

The Power of Attorney is a proactive step by you to ensure that if you cannot be in control of your financial affairs, someone you trust, such as a relative or friend, is making the necessary and everyday decisions for you. This document can be your voice if you are no longer able to make the necessary decisions for yourself, but only if it is signed while you are considered to be of sound mind.

Even though none of us like to think of the possibility of not being in control of our lives, many unexpected situations can arise.

For example: You are involved in a serious accident and are incapacitated for a brief or even an extended period. Who will care for your finances? Who will care for your children?

Is this something that you would want to have decided by others during a likely tumultuous time, or something you would rather decide, in advance, with care, thought, and trust?

There are a multitude of instances where your family members, even a spouse or your next-of-kin, will not be able to access or deal with your finances if you are incapacitated

It may be surprising to know for example that your spouse will not be able to access your bank account unless he or she is already named on the account. With a Power of Attorney, your spouse will have access.

Similarly, if you own your home jointly with your spouse, your spouse cannot sell the house without someone consenting to the sale on your behalf. A Power of Attorney grants the authority to sign off on such transactions.

You can address these issues with a Power of Attorney and have the peace of mind that your decisions will be made by a trusted individual, if you are unable to make those decisions yourself.

You can also grant your Attorney the power to make health care decisions for you. These decisions range from whether you prefer a private or shared hospital room, to whether you wish to undergo certain treatments or take medications.

Health care decisions are discussed in greater detail in a paragraph below.

HOW DO I GET A POWER OF ATTORNEY?

It is best to have a Power of Attorney prepared by a lawyer to ensure it meets the legislated requirements and is clear enough to be effective. A generic “kit” or an on-line form may not be up-to-date with the law and may not be suited for your

individual needs.

Taking the initiative now and putting thought into future possibilities could save you and your loved ones pressure, expense, needless litigation, and emotional turmoil.

Most lawyers will draft a Power of Attorney on a flat fee basis. The cost of a Power of Attorney is a small fraction of the costs associated with your family having to bring a guardianship application in the Supreme Court to allow them to perform the same tasks.

HOW DOES A POWER OF ATTORNEY WORK?

Once the donor (the person granting the power) decides who will have the authority for the decision-making (the “Attorney”), the Power of Attorney outlines the specific powers to be given. The Power of Attorney must be signed and witnessed. There are restrictions as to who can sign as a witness and these are defined in the ***Powers of Attorney Act***.

Once signed, the Power of Attorney takes effect and the person who you have chosen as your Attorney will have the power to act on your behalf. You can choose to grant the authority immediately or at a specified time. The Attorney is usually required to take the document to the establishment at which he or she wishes to do business, and show that he or she has been granted the power to act on your behalf.

ENDURING POWER OF ATTORNEY

In order for the Power of Attorney to grant authority beyond your mental capacity or sound mind, the Power of Attorney must be made “enduring”.

It is extremely important that your Power of Attorney be properly worded, to ensure it is enduring, otherwise your intentions may not be honoured.

“SPRINGING” POWER OF ATTORNEY

A Power of Attorney between spouses usually allows the Attorney to act both immediately (i.e., while you have capacity), as well as upon incapacity. This is often done for convenience, for instance, if one of you is out of the country and is not able to sign documents, or if one of you is unable to leave the home to carry out financial activities. If you are not comfortable with someone having authority to access your financial and other personal affairs immediately, give some thought to making the Power of Attorney “springing”.

A springing Power of Attorney stipulates that there must be one or more conditions met before authority is given to the “Attorney”. This condition can be, for example, requiring a medical report that indicates you have reached a position of mental incapacity. If clearly written, the Power of Attorney will not take effect until the condition is met.

There are both pros and cons to the springing Power of Attorney. Have a full discussion with a lawyer to determine what works best for you.

HEALTH CARE DECISIONS

If you do not have mental capacity, you will not be able to give instructions to your health care providers. A Power of Attorney may contain a clause authorizing the Attorney to make health care and/or day-to-day care

decisions for you, but only if you are incapable of doing so. This authority is given under the **Personal Directives Act**. This act permits you to set out in writing your health care wishes, and to appoint a person (known as a “delegate”) to give instructions to your health care provider to carry your wishes out. The document can contain instructions that may have once been contained in a document informally known as a “Living Will.”

The appointment of a delegate can be included in your Power of Attorney document, or it can be made by way of a separate, more detailed document entitled a Personal Directive.

A Personal Directive can authorize specific consent to, and/or refusal of, medical treatment. These instructions must be lawful, and must be followed unless there is evidence you changed your mind after signing the Personal Directive.

As the requirements of the **Personal Directives Act** are complex, it will be best to have a lawyer prepare this document.

Call us and we will gladly discuss the necessity of a Power of Attorney and a Personal Directive and any other documents that are required to complete your estate plan.



IMPORTANT!!

This brochure is not intended to be legal advice and is only for general information purposes. Parkland Law Inc. can accept no responsibility for any reliance on this information without legal advice appropriate to your own situation. If you are contemplating drafting or revising a Will or Power of Attorney specific legal advice is suggested.

Power of Attorney

What you should know and why you need one.



Ensuring Protection for Yourself and Your Family



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