



Community Legal Information Association of PEI

Powers of Attorney



902-892-0853 or 1-800-240-9798

www.cliapei.ca cli@cliapei.ca

This booklet is part of a series called “**Putting Your Affairs in Order At Any Age**”. Publications in this series include:

- Putting Your Affairs in Order At Any Age
- Wills
- Powers of Attorney
- Consent to Treatment
- Health Care Directives
- Moving to a Community Care Facility or Nursing Home
- New Relationships: Legal and Safety Concerns
- Preventing Abuse and Neglect of Older Adults
- You and Your Grandchildren

All of these publications can be found at www.cliapei.ca or can be ordered by calling Community Legal Information Association (CLIA) at 892-0853 or 1-800-240-9798. To view the acts mentioned in these booklets, go to www.gov.pe.ca, click on “Government”, “Supreme Court” and then click on “Statutes”. A list of the acts will come up in alphabetical order. You can also order paper copies from Island Information Service at 368-4000 or 1-800-236-5196. There is a small fee for paper copies.

Powers of Attorney

You can plan ahead for a time when you may be unable to look after your affairs. One way of doing this is to name someone in a power of attorney document.

The following stories are examples of situations people may experience in PEI. At the end of the booklet we explain how the information helped.

Elizabeth fell down and broke her leg. She can't get to the bank to deposit her cheques or to get cash. Her friend Bill has offered to do this for her.

John has just found out that he has dementia and may not be able to look after his own affairs for much longer. He would like to give his daughter the authority to look after his business and make financial decisions for him.

George is in a wheelchair because of nerve damage from diabetes. He is moving to a community care facility and can no longer drive his car. He wants his spouse to deal with his finances and legal affairs because he cannot get out to do it.

This booklet is designed for people like Elizabeth, John, and George. It gives general information about the law concerning power of attorney. We'll meet them again at the end of this booklet.

Words in **bold** are defined in the glossary at the end of this booklet.

What is a power of attorney?

A power of attorney is a legal document that is usually written with the help of a lawyer. This document gives another person the power to look after your financial and legal affairs if you cannot do this yourself or if you wish that person to do it for you. The person you give the power to is called your **attorney**. In this case, **attorney** does not mean your lawyer, though you may choose to give a power of attorney to your lawyer.



A power of attorney does not give a person authority to make decisions about your health care or personal care.



Who can I name in my power of attorney document?

Your **attorney** can be your spouse or partner, a friend, or a family member. It can be a lawyer, an accountant, or a trust company. You can appoint more than one person. Choose someone you trust, someone who knows you well, who knows what you want, and who has the skills to perform the tasks. The person you choose should be someone who will accept the responsibility. The person must be 18 years or older, must be mentally **competent** and must understand what it means to have power of attorney.

How do I give someone power of attorney?

You must be **competent** to enter into a contract. You must understand what it means to give someone power of attorney. To be legally valid, a power of attorney must be in writing and must be signed by you in front of a **witness**.

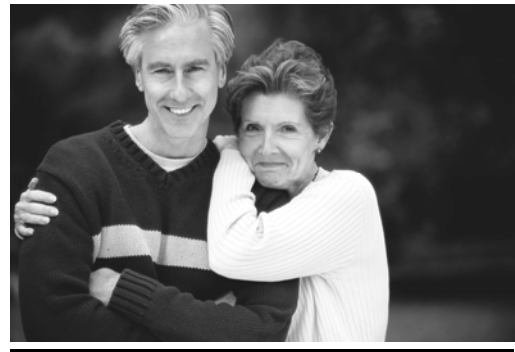
A power of attorney goes into effect as soon as it is signed, unless it has specific dates or specific conditions written into it saying when it will come into effect.

What exactly will my attorney be able to do?

The powers you give to your **attorney** can be as broad or as narrow as you like. What your **attorney** can do depends on the kind of power you give to him or her and the limits you put on it.

There are three types of power of attorney:

- Specific power
- General power
- Enduring power



You can give a specific power of attorney for a specific task, like selling your car or writing cheques for you. It ends when the task is completed. For example, if you give someone specific power of attorney to sell land for you, the power of attorney ends when the sale is complete. A specific power of attorney also ends if you become mentally **incompetent** or bankrupt or you die.

A general power of attorney allows your **attorney** to make decisions about your property and finances. It ends on the date you specify or when you become mentally **incompetent**. Many general power of attorney documents have an **enduring** clause, which means they remain in effect if you become mentally **incompetent**.

An **enduring** power of attorney takes effect when you become mentally **incompetent**.

What can I do to prevent misuse of power of attorney?



It is a good idea to write into the power of attorney document that you want your **attorney** to give you a regular **accounting** of your finances. Otherwise, there is no formal process for the person acting as your **attorney** to tell you how he or she is managing your financial affairs.

You can limit the power you give to your **attorney**. For example, you can set a limit on the amount of money your **attorney** can withdraw from the bank without first getting approval from you. You may not want these limits on a power of attorney if it takes effect or remains in effect after you become **incompetent**.

If your **attorney** has the power to deal with your bank accounts, the bank does not have to tell you when cash is withdrawn from your account. Read your bank statements and your cancelled cheques carefully. The safest approach is to keep informed about your finances.

If your **attorney** is abusing his or her power, get some legal advice immediately. You may be able to sue your **attorney** to recover the money or property. Fraudulent misuse of power of attorney is a criminal offence and charges may be laid.

If you believe that someone's power of attorney is being abused, you can call the police. The police can lay charges if they find evidence of theft or fraud.

Can I cancel my power of attorney?

You can **revoke** or cancel the power of attorney at any time, as long as you are mentally **competent**. You must give notice to your **attorney** that you are cancelling the power of attorney. This notice must be in writing, signed and dated.



You should also write to the organizations and companies which have been dealing with your **attorney** and tell them that your power of attorney has been cancelled.

Can my attorney decide to no longer act on my behalf?

Your **attorney** can give you notice in writing that he or she does not wish to continue. When this happens, your power of attorney will no longer be in effect, unless you have named an alternate. Your **attorney** cannot turn over responsibility to another person – only you can do that. If your **attorney** decides to end your agreement, write to the organizations and companies that have been dealing with your **attorney** and tell them that your power of attorney has ended.

Are there any other ways a power of attorney can end?

If either you or your **attorney** dies or you become bankrupt, your power of attorney ends. Also, if you do not have an **enduring** clause or an **enduring** power of attorney, it will end if you become **incompetent**. A specific power of attorney ends when the task is complete. A general power of attorney ends on a date you specify in the document unless there is an enduring clause.

What happens if I am declared mentally incompetent and don't have an enduring power of attorney?

In this situation, family member(s) or friend(s) would apply to the court to be named as your **committee**. The person(s) named would then be able to look after your financial affairs on your behalf. The person(s) named must provide a regular **accounting** to the court.

Do I have to pay the person I name in my power of attorney document?

You don't have to pay your **attorney** if he or she agrees to act on your behalf without being paid. Otherwise, you may pay whatever amount the two of you agree on. Make sure this arrangement is written into your power of attorney document. Your **attorney** is usually paid for any out-of-pocket expenses.

Do I need to use a lawyer to draw up a power of attorney?



It's always a good idea to check with a lawyer to make sure your power of attorney will allow the **attorney** to do exactly what you wish him or her to do.

If you are making an **enduring** power of attorney that takes effect only when you become mentally **incompetent**, this is usually kept in a law office. The lawyer activates this power of attorney when the physician notifies the lawyer that you have become mentally **incompetent** to manage your financial affairs. Lawyers can also draw up a specific or a general power of attorney.

What about banks and their power of attorney forms?

Banks have their own power of attorney forms, but these forms cover only some of your dealings with that particular bank. They often cover specific accounts and specific activities within those accounts. Be sure to ask questions if you use this service to make sure you are getting what you need.

What is the difference between a power of attorney, a proxy and next of kin?

A power of attorney is the power you give to someone to look after your financial and legal affairs. A **proxy** is the power you give to someone in a **health care directive** to make decisions about your health care when you can no longer make or communicate those decisions yourself. In Prince Edward Island, your **attorney** cannot make decisions about your health or medical care, though you can name the same person as your **proxy** if you wish.



Next of kin is the person or persons most closely related by blood to you. Being next of kin does not give a person any power to act as your **attorney** or **proxy** unless you have named them in the documents.

To learn more about **proxies** and **health care directives**, please call CLIA at 892-0853 or 1-800-240-9798. CLIA also has blank health care directive forms used by the province.



NOTE: The Office of the Public Trustee and Guardian is a provincial government office that operates as a substitute decision-maker for individuals in rare situations.

The Public Trustee can become the **committee** for someone if:

- someone without an enduring power of attorney is declared incompetent to deal with their finances (2 Certificates of Incompetency are required),
- the person has finances that need to be dealt with,
- there is absolutely no one to take on this role, and
- the Public Trustee agrees to do so.

The Public Guardian can apply to the courts to become the guardian for a person if:

- the person is declared legally incompetent to look after themselves (2 Certificates of Incompetency are required),
- there is absolutely no support person or system in place for that person, and
- the Public Guardian agrees to do so.

In both these situations, the Office is a last resort and considered only after all other options are looked at. For more information, you can call this Office at 902-368-6281.

Now let's look at Elizabeth, John, and George...

Elizabeth phoned her bank and arranged to sign their power of attorney form. This will give her friend Bill the power to do her banking while she is recovering. The form includes the date when the power of attorney ends.

John called CLIA, got information and a lawyer referral. John signed a general power of attorney with an enduring clause written by a lawyer. John now knows that someone he trusts will be looking after his finances.

George's lawyer came to the hospital and got instructions from George about his power of attorney. George signed the document. His partner is now able to look after George's financial affairs.

Glossary of Terms

accounting: a report of all financial dealings made by your attorney

attorney: a legal term for a person named in a power of attorney document to look after your financial and legal business. It does not mean a lawyer in this context, but you could name your lawyer as your attorney in your power of attorney document

committee: the name given to one or more people appointed by the Supreme Court to make financial decisions for you if you are declared mentally incompetent and have no enduring power of attorney

competent: refers to mentally competent; in this booklet it means that a person is able to understand financial or legal matters and has the ability to make decisions

enduring: refers to a power of attorney that is written so that it remains in effect after a declaration of mental incompetence

health care directive: a document in which you write down your wishes about treatment in case you are unable to make decisions or communicate them at a future time

incompetent: refers to mentally incompetent; in this booklet it means that a person is not able to understand financial or legal matters and is unable to make decisions about their finances

proxy: a person named in a health care directive to make decisions when the person who made the directive cannot make or communicate decisions

revoke: to cancel



Caution:

The contents of these booklets are general information only and should not form the basis of legal advice. The contents are not a complete statement of the law or policy in these areas. Changes in law and policy occur frequently, so readers should check with CLIA or a lawyer for up-to-date information. For legal advice, contact a lawyer or call the Lawyer Referral Service at 892-0853 or 1-800-240-9798.

Date: October 2010

ISBN: 978-1-897436-28-8

Charitable Registration Number: 118870757RR0001

Funding for this project was provided by Human Resources and Skills Development Canada through the New Horizons Program. The views expressed do not necessarily represent the official policy of HRSDC.
