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**Community Legal Information Association  
of Prince Edward Island, Inc.**

What Seniors Need to Know

**Powers of Attorney  
and the  
Role of the Public Trustee**

*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.

*Fred and Mary* are planning to go to Florida for the winter. While they're away they want their son to look after the house and take care of cheques and bills that come in the mail.

*John* has just found out that he is ill 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 on his behalf.

*Ann* is in a home for special care. She is physically unable to manage her financial affairs. Her only relative is a nephew who lives in Australia. Ann needs someone she can trust to handle her finances.

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**This pamphlet explains what you need to know about powers of attorney and the role of the Public Trustee. It is part of the series Planning Ahead - What Seniors Need to Know.**

***Words in bold are defined in the glossary on page 10.***

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You can plan ahead for a time when you may be unable to look after your own affairs. One way of doing this is to own everything jointly with another person (bank accounts, house, car etc). Another way is to give someone a **power of attorney**. If you have special instructions about your health care, you can write out a **health care directive** (sometimes called a living will and covered in another publication in this series). If there are no family members or close friends whom you can trust, you can inform yourself about the role of the **Public Trustee**.

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### **What is a power of attorney?**

A power of attorney is a legal document usually written with the help of a lawyer. 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 allows the person or persons named in the document to take care of your financial and legal business if you cannot do this yourself, or if you wish them to do it for you. A power of attorney **does not** give a person authority to make decisions about your health care.

### **Who can be my attorney?**

Your attorney can be your spouse or partner, a friend, or a family member. It can be a lawyer, 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 capable** and must understand what it means to have power of attorney.

## **How do I give someone power of attorney?**

You must be mentally capable of entering 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 you must sign it. It must also be signed by at least one 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.

## **What exactly will my attorney be able to do?**

You can make the powers of your attorney as broad or as narrow as you like. What your attorney can do depends on the kind of powers you give to him or her. There are three types of power of attorney:

- Specific power
- General power, or
- Enduring power

You can give a specific power of attorney for a specific task – for instance, to sell your car or write 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 incapable***.

A general power of attorney allows the attorney to make decisions about your property and finances. It ends on the date you specify or if you become mentally incapable.

An ***enduring power of attorney*** continues in place if you become mentally incapable. In fact, it is often activated only when you become incapable. When this happens, the Public Trustee is automatically informed that you are mentally incapable or

***incompetent***. If the Public Trustee believes that a problem exists with your power of attorney, the Public Trustee will become your committee. When this happens, any powers of attorney that you have made will become ***void***.

### **What is a committee?**

A committee is the name given to one or more people, usually appointed by the Supreme Court of PEI, who make decisions for you if you are incompetent and incapable of making them on your own. Sometimes the Public Trustee acts as a committee and sometimes a committee is a family member or a close friend. A committee will always be named if you have not given an enduring power of attorney to someone you trust.

The Public Trustee reviews all applications for committee. If there is no one who can act on your behalf, the Public Trustee will become your committee. The committee looks after all your financial and business affairs. There is no charge for this service.

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

It is a good idea to write into the power of attorney that you want the person 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 affairs.

You **can** limit the power you give to your attorney. For example, you can write into your document a limit on the amount of money your attorney can withdraw from the bank without first getting approval from you. The best approach is to keep informed about your finances. You may not want these limits on a power of attorney that only takes 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.

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. Misuse of power of attorney is a criminal offence.

If you are incapable or no longer able to act on your own behalf and a family member, friend, or someone else believes that your power of attorney is being abused, they can contact the office of the Public Trustee for help.

If you believe or know that someone else's power of attorney is being abused, call the office of the Public Trustee and the police. The police can lay charges if they find evidence of theft or fraud. Also, the Public Trustee can take over if abuse of Power of Attorney is suspected.

### **Can I cancel my power of attorney?**

Yes, you can *revoke* or cancel the power of attorney at any time while you are *competent* to do so. To cancel the power of attorney, you give notice to your attorney that you are ending the power of attorney. You must give this notice in writing and sign and date it.

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 ended.

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

Yes, 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. 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.

## **Do I have to pay my attorney?**

You don't have to pay your attorney any fees if your attorney agrees to act on your behalf without being paid. Otherwise, you may pay your attorney whatever amount the two of you agree upon. 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 when you become 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 incapable of managing your affairs. Legal advice can also help to draw up a specific power of attorney.

Cost of drawing up a power of attorney in 2004 is approximately \$\_\_\_\_\_

## **What about banks and their power of attorney forms?**

Banks often have their own power of attorney forms, but these forms cover only your dealings with that particular bank. They often cover only specific accounts and specific activities within those accounts, so 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 and a proxy?**

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 power of attorney cannot make decisions about your health or medical care, though you can name your attorney as your proxy in a health care directive if you wish.

## **Who is the Public Trustee?**

The Public Trustee is a person appointed by the provincial government to help people who are unable to look after their own financial and legal affairs. The Public Trustee gets involved when you have no trusted family or friends who can act as your attorney or your committee. This might happen if all your family or friends live in another province.

## **What is the difference between a power of attorney and the Public Trustee?**

You give a power of attorney to someone you trust to look after your affairs. You may also give a power of attorney to the Public Trustee if you have no other person to act on your behalf. Otherwise, the Public Trustee usually steps in only after you have been declared incompetent and if you have made no arrangements about your financial affairs or if there are concerns about how your power of attorney is being used. The Public Trustee has the power to take over the administration of your finances if your attorney has not been acting in your best interests.

## **What is the difference between the Public Trustee and the Public Guardian?**

The Public Trustee helps you if you are not able to look after your financial or legal affairs. A guardian, including the Public Guardian, is appointed by the court when you are incapable of making day-to-day decisions about your life.

## **When and how does the Public Trustee get involved?**

The Public Trustee gets involved with your financial and legal business when you are declared incompetent or when you ask for help because you have no one else you trust to help you. When you are declared incompetent, two certificates of incompetency signed by different doctors are automatically sent to the Public Trustee. The Public Trustee will become your committee and act on your behalf if:

- You don't have an enduring power of attorney
- No committee has been appointed by the court
- There are concerns about how your attorney has been acting, and
- You have no relatives or close friends to take on the responsibility

## **Will the Public Trustee contact my relatives?**

Yes – within twenty days, the Public Trustee must tell your closest known adult relative about your situation.

## **Is my committee or the Public Trustee accountable to anyone?**

Yes – a court appointed committee must file an inventory of your financial and business assets with the prothonotary (a court official) within three months of being appointed. Then a detailed report of your finances must be filed each year. The Public Trustee's accounts are all audited yearly by the Auditor General.

## **Does it cost anything for the Public Trustee to act on my behalf?**

When the Public Trustee acts as a committee for a person's financial and legal affairs, fees can be charged according to the Public Trustee Act. These expenses for managing your affairs are paid from your own funds. In practice, the Public Trustee does not usually charge fees for services.

## **When and how does a committee end?**

There are four ways in which a committee ends:

- When you recover from an illness which has temporarily made you incompetent and you apply to the court for an order which ends your committee
- When a court decides that you are competent
- When the certificates of incompetency filed with the Public Trustee are cancelled, or
- When you die.

After your death a court-appointed committee must file a final report of its administration with the prothonotary and then turn your estate over to your executor or administrator. The Public Trustee will also turn your estate over to your executor or administrator.

If you have additional questions about the role of the Public Trustee or a power of attorney, contact your lawyer or call the office of the Public Trustee at 368-4564.

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***Back to Elizabeth.....***Elizabeth phoned her bank and arranged to sign power of attorney forms. This will give her friend Bill the power to do her banking while she is recovering.

***Back to John .....***John called CLIA. He got information in the mail and was referred to the Lawyer Referral Service. John and his daughter have both signed an enduring power of attorney written by a lawyer, following John's instructions.

***Back to Fred and Mary.....*** Fred and Mary visit their lawyer and have a specific power of attorney written covering the time they will be away. Their son signed this form which allows him to take care of things while they are gone.

***Back to Ann .....*** Ann asks a staff member to phone the Public Trustee, who visits her. The Public Trustee makes the proper arrangements to handle financial matters for her.

## Glossary of Terms

<b><i>accounting</i></b>	a report of all financial dealings made by your attorney
<b><i>attorney</i></b>	a legal name for a person who looks after your financial and legal business
<b><i>competent</i></b>	refers to “mentally competent”; in this pamphlet it means that a person is able to understand financial or legal matters and has the ability to make decisions
<b><i>enduring</i></b>	to remain in existence for an indefinite time
<b><i>evidence</i></b>	information about the legal and financial business your attorney has been doing on your behalf
<b><i>health care directive</i></b>	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
<b><i>incompetent</i></b>	refers to “mentally incompetent”; in this pamphlet it means that a person is not able to understand financial or legal matters and is unable to make decisions
<b><i>mentally capable</i></b>	see competent
<b><i>mentally incapable</i></b>	see incompetent
<b><i>prothonotary</i></b>	a court official who is also a lawyer
<b><i>revoke</i></b>	to put an end to something formally; to cancel an agreement
<b><i>void</i></b>	having no legal effect

***Credits***

*The information in this pamphlet was prepared by Community Legal Information Association of PEI, Inc. The material was extensively reviewed and edited for accuracy and readability.*

***Caution***

*The contents of these pamphlets are general information only and should not form the basis of legal advice. Changes in law and policy occur frequently, so readers should check with a lawyer or Community Legal Information Association (telephone 892-0853 locally or 1-800-240-9798 toll-free) for up-to-date information.*

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