

Powers of Attorney...Why? & How?

Two kinds of power of attorney possible

- **Continuing Power of Attorney for property (“CPOA”)**
- **Power of Attorney for Personal Care (“POAPC”)**

CPOA – What is it?

- **document that enables you (the donor) to appoint someone (the attorney) to manage all your “property”**
- **“property” = house, cottage, bank accounts, investments, car, belongings**

- **can only be used while you are alive**
- **attorney's authority ceases upon your death**
- **your attorney cannot manage your estate**

CPOA – Who should I name as attorney?

- **attorney steps into your shoes to manage your finances**
- **someone in whom you have utmost confidence and trust**

CPOA – Should I appoint only one attorney?

- **depends on your personal situation**
- **can name 2 to act jointly – check & balance**
- **consider appointing an alternate if first attorney unable to act**

CPOA – How can I be sure it is valid? (the technical requirements)

- donor must be at least 18 years old**
- attorney must be at least 18 years old**
- donor must have the required mental capacity**

- **attorney must have the required mental capacity**
- **no specified form**
- **does not need to be “sealed”, “notarized” or signed in front of a lawyer**
- **must be signed by donor in front of 2 witnesses both present at the same time**

- **Witnesses CANNOT be:**
 - **attorney**
 - **attorney's spouse/partner**
 - **grantor's spouse/partner**
 - **grantor's child**
 - **someone who has been declared mentally incapable**
 - **someone under 18 years of age**

- **CPOA must provide that it is “continuing”**
- **“continuing” = authority given can be exercised even if donor becomes mentally incapable of managing property**

CPOA – What is the “required mental capacity”

- **Donor is capable if:**
 - **knows their assets and their approx. value**
 - **aware of obligations owed to dependants**
 - **knows attorney can do anything with their property**

- knows attorney must account for his/her actions**
- knows they can revoke CPOA if still capable**
- appreciates that unless attorney manages wisely, assets could devalue**
- appreciates that attorney could misuse the power**

CPOA – When does it come into effect?

- **can come into effect upon signature**
- **can come into effect upon a certain event**
- **can come into effect only upon mental incapacity**

- **if CPOA comes into effect only on mental incapacity, ensure it specifies how incapacity is determined**
- **if the method not specified, then it comes into effect upon assessment by designated capacity assessor**

CPOA –Do I need a lawyer?

- no requirement to have it prepared by lawyer**
- may be useful to consult with lawyer**
- lawyer's assistance might help avoid pitfalls or deal with difficult issues**
- not as expensive as you might think**

POAPC – What is it?

- **document that allows you (donor) to appoint someone (attorney) to make personal care decisions for you**
- **“personal care” = health care, where you live, safety, clothing, hygiene, nutrition**
- **allows you to give directions/express your wishes**

POAPC - Who do I name?

- **again someone you trust implicitly**
- **possible to name more than one person**
- **consider naming an alternate in case first one can't act**

POAPC – How can I be sure it is valid? (the technical requirements)

- donor must be at least 16 years old**
- attorney must be at least 16 years old**
- donor must have the required mental capacity**

- **attorney must have the required mental capacity**
- **no specified form**
- **does not need to be “sealed”, “notarized”, signed in front of a lawyer**
- **must be signed by donor in front of 2 witnesses both present at the same time**

- **Witnesses CANNOT be:**
 - **attorney**
 - **attorney's spouse/ partner**
 - **grantor's spouse/partner**
 - **grantor's child**
 - **someone who has guardian of property or of the person**
 - **someone who is less than 18 years old**

- **Attorney for personal care CANNOT be someone you pay to provide health care, residential, social, training or support services to you**

POAPC – What is the “required mental capacity”

- **Donor is capable if:**
 - **able to understand whether attorney has genuine concern for their welfare; and**
 - **appreciates that they may need to have attorney make personal care decisions for them**

POAPC – When does it come into effect?

- **for treatment or placement to LTC, when proposing practitioner finds donor incapable**
- **for other types of decisions, when ATTORNEY has reasonable grounds to believe donor incapable of making the decision in question**

- **BUT POAPC can include condition that it only comes into effect if donor's incapacity confirmed**
- **it may also specify the method of confirming the donor's incapacity**
- **if no method specified, then designated capacity assessor confirms incapacity**

Duties and obligations of an attorney for property - HIGHLIGHTS

- **must keep donor's financial accounts and transactions separate**
- **must never borrow donor's money for self or family**
- **must consider personal comfort or well-being of donor when acting**

- **must ensure donor's needs met before making payments to dependants or creditors**
- **must keep complete and accurate records**
- **must be able to account to the donor for all dealings**
- **must keep donor's financial/personal information confidential except in limited circumstances**

- **OVER-RIDING DUTY: act diligently, with honesty and integrity and in good faith for the donor's benefit**