

Royal Trust Blog: Why you should have Powers of Attorney* - by Elaine Blades

Posted by [Elaine Blades](#) Aug 14, 2019



As we live our day-to-day lives, we sometimes forget about the planning that we should be doing to help protect ourselves, our wishes, our assets and our loved ones. But, it is essential to make preparations in the event that you should ever become incapacitated. Part of that planning includes creating Powers of Attorney (POA).

POA 101

There are two basic types of POA:

- a POA for personal care empowers you to plan for your own care,
- and a POA for property helps to ensure that your property is protected.

The document itself is called a power of attorney, and the person or trust company you appoint is called your attorney. A trust company can act as an attorney for property, but not as attorney for personal care. POA law is different in each province; terminology and rules vary somewhat across the common law provinces and is significantly different under Quebec's Civil Code.

POA for personal care

A POA for personal care involves appointing someone that you trust to make care arrangements for you should you become incapable of making these important decisions yourself. This person is entitled to now make decisions regarding your health and personal care, but cannot make property or financial decisions. If you don't appoint one, and need one, a relative may be asked to make these decisions on your behalf.

POA for property

A POA for property is a written legal authority given by you to another person or institution to act on your behalf in respect of your property and financial assets.

- The primary duty of an attorney is to act in your best interests.
- Your attorney can essentially do anything regarding your property that you could except make a Will.
- It is effective immediately upon signing, unless stated otherwise in the document.
- The document can be made conditional on your incapacity, which can also be done in a side document.
- It can be limited in time or scope, or general, which is more common.

Most importantly, if you become incapable of managing your property and do not have a POA in place, your accounts may be frozen and important decisions about your property may go unmade until a court-appointed guardian is put in place. If this happens, it can be a costly and time-consuming process at a time when you need an advocate the most.

POAs and Wills

Did you know that POAs and Wills are two separate documents? In order to protect your assets during your life and after your death you need both a power of attorney for property and a Will.

- Your Will is only effective when you die, and your executor has no authority prior to your death.
- A POA for property ceases to be effective upon your death, and so does your attorney's authority.

- While it is not uncommon to appoint the same individual(s) or trust company to both executor and attorney for property roles, they must be appointed under separate documents.

What you need to know about creating a POA

To create a POA, you must have a certain level of capacity. For example, the law in some provinces, requires individuals to pass a “test” where, in part, you are required to show an appreciation that the person you appoint as attorney could abuse the authority you are giving to them.

Unfortunately, abuse does happen. Misuse of a POA for property is one of the most common means of committing elder financial abuse.

You can help protect yourself and your family by appointing someone you trust that is also knowledgeable, or an institution, as your attorney for property. You can ensure your personal care wishes will be met by documenting them and appointing someone you trust to make decisions should you become mentally incapacitated. Plus, if you change your mind in whom you appoint to be your attorney, you can revoke a POA for any reason as long as you still have the capacity to give one.

*We have used the terms “power of attorney for property” and “power of attorney for personal care.” Depending on the province/territory, the term used to describe a power of attorney document for property that can be used during the donor’s incapacity may vary. Some provinces/territories may refer to it as a “continuing” or “enduring” power of attorney. In Quebec, it is referred to as a “Protection Mandate.” Please check with your jurisdiction’s legislation for the appropriate terminology and and rules specific to your province.

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Christina Grabbe

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Thank you for sharing!



[Steven Stewart](#)

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How does a trust company charge for POA duties? Is it a percentage of assets or by the hour or yearly/ monthly flat rate?