

ONTARIO ESTATE CONSULTING SOLUTIONS INC.

“POWER OF ATTORNEY 101”

This document compares two different types of Power of Attorney documents in Ontario. This is not meant to be an exhaustive list of questions. It provides an overview of commonly asked questions.

Some quick notes about language. The term “Power of Attorney” is the actual document you sign in order to name an individual(s) to make decisions for you. The individual(s) you name in your Power of Attorney document is called your “Attorney”. This does not mean your lawyer. For example, the person you name in your Power of Attorney for Property is called your “Attorney for Property”.

	Continuing Power of Attorney for Property	Power of Attorney for Personal Care
1 - What is the Minimum Age to Complete a Power of Attorney?	18	16
2 - What is the Minimum Age to Be Appointed in a Power of Attorney?	18	16
3 - What Types of Decisions Will the Person(s) I have Appointed in My Power Of Attorney Be Making For Me?	Unless there is wording restricting the use of the document, they can make all financial decisions including legal, banking, property, contracts etc. However, they cannot make a new will, new Power of Attorney or change a beneficiary designation on a policy of life insurance, RRSP, TFSA, RRIF etc.	<p>Healthcare Treatment Decisions (e.g., medication, surgery, life support, etc)</p> <p>Admission to a Care Facility (e.g., a Long-Term Care Home)</p> <p>Personal Assistance Services while in a long-term care home (e.g., bathing and eating)</p> <p>Personal Care (e.g., diet, housing, hygiene, clothing, safety)</p>
4 - When Does The Document Take Effect?	<p>Depends on how the document has been drafted. It could come into effect immediately or it could come into effect only upon certain conditions being met.</p> <p>A continuing power of attorney for property is valid as soon as it is signed and witnessed and continues into an incapacity. You do not need to be incapable for your attorney for property to act.</p>	<p>For healthcare, it comes into effect when the healthcare provider offering you a treatment believes you are not mentally capable of making healthcare decisions for yourself.</p> <p>For personal care, it comes into effect when you are unable to make the decisions for yourself and the individual(s) you have named steps in to make the decisions, unless it is stated otherwise.</p>

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<p>5 - When Does the Document End?</p>	<ul style="list-style-type: none"> - When you die - When the person you have appointed dies, becomes incapable or resigns - When the court appoints a Guardian of Property for you - When you sign a new Power of Attorney unless the new one says you want more than one Power of Attorney document in effect - You revoke (cancel) the Power of Attorney (state in writing that you revoke it and two people must witness you signing it. There is no special form for this). 	<p>Same as Power of Attorney for Property</p>
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<p>6 - What Happens If There Is No Power of Attorney Document and I Become Mentally Incapable?</p>	<p>There is no statutory provision for a default appointment. One of the following could happen:</p> <ol style="list-style-type: none"> 1. The Ontario Public Guardian and Trustee could be appointed to manage your property - this is called a "statutory guardianship". A close relative could later apply to take over the formal management of your property. 2. Some of your property, such as pensions and social benefits, could be managed by friends or relatives 3. Someone could apply to be appointed as your Guardian of Property (this requires a Court Order) 	<p>Everyone in Ontario has an automatic Substitute Decision Maker for Health Care.</p> <p>This means you still have someone to make your health care decisions for you even if you don't have a Power of Attorney for Personal Care.</p> <p>See the last page in this document for more information on this.</p> <p>Or you can click here for more information</p>
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<p>7 - Can I Name More than One Person in my Power of Attorney?</p>	<p>Yes, you can name more than one person. But remember they must agree before a decision can be made on your behalf, unless stated otherwise. You can name two or more people either:</p> <ol style="list-style-type: none"> 1. “Jointly” which means they always have to make decisions together 2. “Jointly and Severally” which means they can either make decisions together or separately. <p>You may also want to name alternates or “backups” in case the person you designate cannot act.</p> <p>There could be risks with naming more than one person jointly - please consider your options carefully and perhaps consult a lawyer. You may want to insert an arbitration clause in the document to resolve disputes.</p>	<p>Yes, you can name more than one individual. But remember they must agree before a decision can be made on your behalf, unless stated otherwise. You can name two or more individuals either:</p> <ol style="list-style-type: none"> 1. “Jointly” which means they always have to make decisions together 2. “Jointly and Severally” which means they can either make decisions together or separately. <p>You may also want to name alternates or “backups” in case the individual you designate cannot act.</p> <p>There could be risks with naming more than one individual jointly - please consider your options carefully and perhaps consult a lawyer. You may want to insert an arbitration clause in the document to resolve disputes.</p>
<p>8 - Do I need to use a lawyer to create my Power of Attorney?</p>	<p>The Ontario Ministry of the Attorney General provides free forms so that you can properly complete, sign and witness these documents which can be downloaded from this link:</p> <p>https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.pdf</p> <p>Many people seek the counsel and advice of the lawyer who drafted their Will documents to also do their Power of Attorney documents. A lawyer who knows you well enough to have drafted your Wills may well have further insights into specific provisions for your Power of Attorney documents.</p>	<p>Same as Power of Attorney for Property</p>
<p>9 - Can a Trust Company be appointed in my Power of Attorney?</p>	<p>Yes and can also be a co-attorney, alternate or agent.</p>	<p>No - only an individual can be named in a Power of Attorney for Personal Care</p>
<p>10 - Can I Have More than one Power of Attorney Document?</p>	<p>Yes. A General Power of Attorney has no restrictions but it is possible to also have another Power of Attorney for specific limited situations/assets.</p>	<p>Yes, but the most recent one will automatically revoke/cancel the older one unless otherwise stated.</p>

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<p>11 - When Would my Power of Attorney Document have Restrictions?</p>	<p>You can design your power of attorney to be as broad or restrictive as you wish.</p>	<p>You may include your wishes for health and personal care in your POA for Personal Care and it is up to your attorney for personal care to interpret what you meant by these wishes. In Ontario, you do not have to write your healthcare wishes down. You can express your wishes verbally, in writing or any other way you communicate.</p> <p>The best approach is to discuss your wishes, values and beliefs directly with your attorney for personal care and others.</p>
<p>12 - Where Should my Power of Attorney Document be Kept?</p>	<p>Your Power of Attorney should be in a secure place but likely not in your safety deposit box. It may be a good idea to keep it with the lawyer who drafted it. Be sure to tell your attorney for property where the documents are kept.</p>	<p>Best practice would be to give a signed POA to each individual you have named in your POA as well as an original at the lawyer's office who drafted it.</p>
<p>13 - Do I need a Separate Power of Attorney if I Travel Outside of Ontario?</p>	<p>If you own property outside of Ontario it may well be a good idea to have a separate Power of Attorney written in the jurisdiction where you own non-Canadian property.</p>	<p>It is suggested that you speak with a lawyer in the place you are visiting for extended periods as the laws differ in each jurisdiction.</p>
<p>14 - Are my Attorneys for Property and Personal Care Entitled to be Paid?</p>	<p>Unless your Power of Attorney is drafted to the contrary, your attorney for property is able to make a claim for compensation up to the maximum fee scale allowed by Ontario law. Your attorney for property may choose to take less than this or nothing at all if they wish.</p> <p>Visit this site for the fee scale</p> <p>https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/guardrduties.php#compensation</p>	<p>There are no regulations or statutory provisions limiting the type of compensation for an attorney for personal care. Instead courts have awarded amounts of money, often based on an hourly rate similar to caregiver services for discharging the duties of the attorney for personal care. It is good practice for an attorney for personal care to keep all receipts as well as a log book of time spent acting in this role. Can be compensated by attorney for property OR executor after the person has died.</p>
<p>15 - What are the Characteristics of a Suitable Attorney?</p>	<p>Must be trustworthy and have your full confidence to act on your behalf. Financial literacy is important. Having them live nearby is helpful.</p>	<p>Must be trustworthy and have your full confidence to act on your behalf. They must be willing to honour your wishes and be able to make hard decisions. Having them live nearby could be helpful although not mandatory.</p>

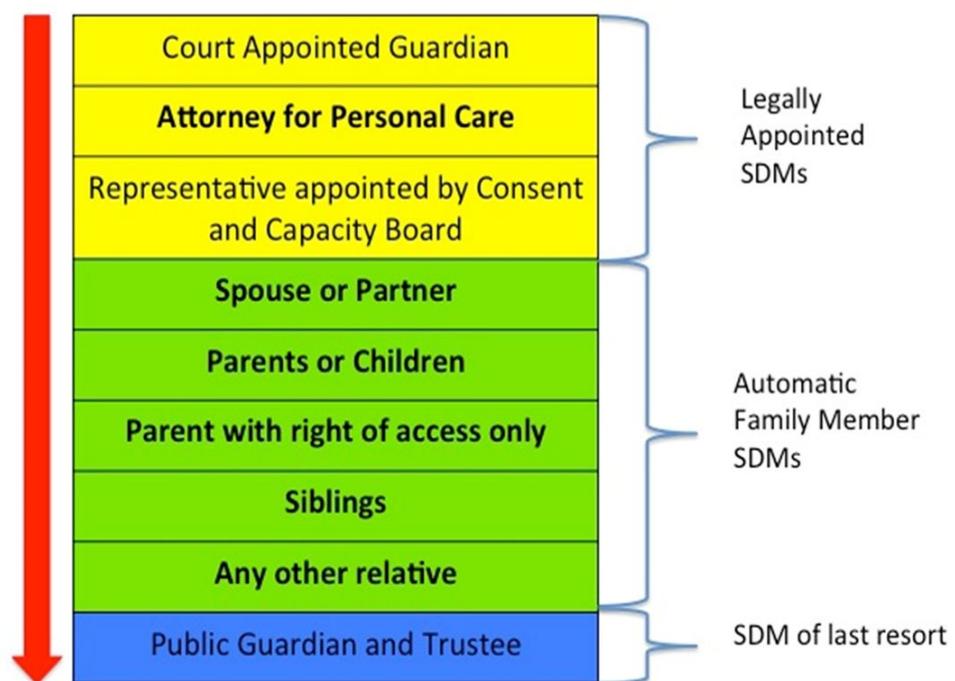
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When completing your Power of Attorney documents, please consider the following:

- Ensure that you speak to the people you are naming in your Power of Attorney documents, ideally before you sign the document, to ensure that they are willing and able to act, and to share your wishes, values and beliefs with them.
- Take into account the significant time commitment that may be required from your attorney. Consider if having a Trust Company appointment for Power of Attorney for Property might be an option.
- Take into account geography as it is easier for an attorney for property to do their job if they live fairly close to where you (and your assets) reside
- It may be a good idea to name alternates/back ups in your Power of Attorney in case the primary person you have named is unable or unwilling to act for some reason. For example, "I want Joe to be my primary attorney for personal care but if he is unable or unwilling, then I name Jane to be my alternate attorney, etc".
- Review your documents every few years to ensure that the people you have named are still willing, able and appropriate.
- As a rule, it is usually better to prepare a Power of Attorney for Property to allow someone to help you with your finances rather than putting any of your assets in joint names with someone else (although there may be valid exceptions to the rule). Speak to a lawyer about this if you desire further counsel.
- If you have not completed a Power of Attorney for Personal Care, you still have a Substitute Decision Maker for healthcare according to the hierarchy below.
- Visit www.acpww.ca for more information about the hierarchy of Substitute Decision-Makers for healthcare, including a short video.

Hierarchy of Substitute Decision-Makers for Healthcare only

Your Substitute Decision-Maker for healthcare is the individual or individuals who are the **highest ranking** in the hierarchy and meet the requirements below



Ontario Health Care Consent Act, 1996

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Requirements to be a Substitute Decision-Maker for healthcare

The individual(s) highest in the hierarchy can act as an SDM only if they are:

- a. Mentally capable with respect to treatment proposed,
- b. At least 16 years of age unless they are the parent of the incapable person,
- c. Not prohibited by court order or separation agreement from having access to the incapable person or giving or refusing consent on their behalf,
- d. Available, and
- e. Willing to assume the responsibility of giving and refusing consent

* This document was developed, in part, from resources produced by CLEO (Community Legal Education Ontario) and was prepared in collaboration with community partners

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