

WILLS, POWERS OF ATTORNEY FOR PROPERTY AND POWERS OF ATTORNEY FOR PERSONAL CARE

By Mary Wahbi and Kathryn Balter

Most people are hesitant when it comes to dealing with their Wills and Powers of Attorney. Death and Disability are not easy subjects to deal with. Unfortunately, these are realities that are better dealt with than not.

WHY DO I NEED A WILL?

Everyone who owns assets and wishes to make the decision of who will handle the assets on their death and who will receive those assets should have a Will.

A properly prepared Will allows you to:

1. Choose your estate trustees (executors) who will handle your estate, rather than have a court appoint a person;
2. Choose the initial guardians of your minor children;
3. Ensure that your assets will be distributed to the people you choose and in the way you choose, rather than the distribution provided in provincial legislation;
4. Choose when a beneficiary is to receive his or her inheritance, whether immediately after death, at a specific age or in stages over a period of time;
5. Make special gifts of specific items to specific people;
6. Ensure that your obligations to your spouse and dependants are adequately provided for to avoid unnecessary estate litigation which may be very costly and cause delay in the administration of your estate;
7. Deal with your assets and estate in a way that maximizes tax savings and minimizes Estate Administration Tax (probate fees).

If your Will is more than three to five years old, it may need to be reviewed and updated to account for changes in family circumstances, changes in your desires and changes in the law.

In order to ensure the effectiveness and timeliness of your Will, it should be reviewed by an experienced solicitor at regular intervals and whenever the need arises.



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Without a Will, your hard-earned money may go to individuals who you do not wish to benefit or be significantly reduced by the cost of taxes, probate fees and/or litigation.

ESTATE ADMINISTRATION TAX

Estate Administration Tax (commonly referred to as "**probate fees**") in Ontario are charged at \$5.00 per \$1,000.00 for the first \$50,000.00 of estate assets and \$15.00 per \$1,000.00 of estate assets greater than \$50,000.00. A typical estate worth \$500,000.00 will incur probate fees of \$7,000.00.

The combined effect of probate fees and capital gains tax on death may result in a serious reduction of assets intended to go to beneficiaries.

A number of estate planning techniques are available either to entirely eliminate or substantially reduce probate fees and capital gains tax.

WHY DO I NEED A POWER OF ATTORNEY FOR PROPERTY?

A Power of Attorney for Property authorizes the person(s) appointed to act on behalf of the person signing the Power of Attorney for Property in conducting his or her financial affairs. The authority given may be general, relating to all financial affairs, or may be limited to one or more specific investments or transactions. The authority may be indefinite in duration, or limited, for example, to during an extended vacation. The authority given is usually intended to survive incapacity and in some cases, is conditional on incapacity.

Ideally, everyone over the age of 18 years should have an attorney to act in the event of loss of mental capacity or disability. **The costs of having a proper Power of Attorney for Property prepared are small compared to the costs of a court application.**

If such a tragedy occurs and a Power of Attorney for Property is not in place, in order to handle the disabled person's financial affairs, the spouse or other family member would have to be appointed by court order as the disabled person's guardian. As well, under certain circumstances, The Public Guardian and Trustee may become the disabled person's statutory guardian. **Neither alternative is desirable as both would involve time, significant expense and aggravation at a time when it is least likely to be manageable.**

WHY DO I NEED A POWER OF ATTORNEY FOR PERSONAL CARE?

A Power of Attorney for Personal Care authorizes the person(s) appointed to act on behalf of the person signing the Power of Attorney for Personal Care in making personal care decisions if the person giving it becomes incapable of making such decisions. Personal Care decisions are those relating to health care, nutrition, shelter, clothing, hygiene and safety.

Unlike a Power of Attorney for Property, a Power of Attorney for Personal Care can only be relied on by a third party if the person giving it is incapable of making the decision in question.

The Power of Attorney for Personal Care can provide two things. First, it allows you to choose one or more persons to make personal care decisions on your behalf if you are unable to. Second, it can contain instructions as to the decisions you want made, including authorizing or prohibiting certain types of treatment under specified circumstances. This is of great assistance to family members who are coping with the emotional impact of the illness and family disruption and are faced with making a serious medical decision.

If a person loses their capacity and does not have a Power of Attorney for Personal Care, the Provincial legislation provides a hierarchy of family members who are entitled to make the necessary decisions and the Public Guardian and Trustee as the last resort, but this legislation only permits decision making in the context of consent to treatment or placement in long-term care. **The person entitled to make decisions under this legislation may have no idea what your wishes are with respect to your personal care decisions or they may not be a person that you wish to make such decisions on your behalf.**

CONCLUSION

A properly prepared Will, Power of Attorney for Property and Power of Attorney for Personal Care will allow you to make your wishes known, will ensure that your wishes are followed while you are alive and after your death, and may save your family emotional hardship, time and money.