

# EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT A POWER OF ATTORNEY, BUT WERE AFRAID TO ASK

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## WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a legal document. It authorizes your *attorney* to take care of your financial, legal or medical affairs. The person (or people) you give authority to is called your attorney. Your attorney does not have to be a lawyer.

There are three different types of Power of Attorney

- *Power of Attorney for Personal Care*

A Power of Attorney for Personal Care gives your attorney authority with respect to your medical and personal affairs when you become incapable of doing so on your own. Such authority includes decisions over your health care, housing, food, clothing and safety. You can also give your attorney the authority to refuse or consent to medical treatment.

- *Continuing Power of Attorney for Property*

A Continuing Power of Attorney for Property authorizes your attorney to make financial decisions with respect to your personal possessions, business or legal affairs, property and finances. It is called "continuing" because it continues to apply should you become mentally incapable to act for yourself. With the exception of making a will, your attorney can make virtually any decision regarding your property or finances that you can make.

- *Non-continuing Power of Attorney for Property*

A non-continuing Power of Attorney differs from a Continuing Power of Attorney because it ceases to be valid if you become mentally incapable. It is commonly given when you are away from home or unavailable to take care of your financial affairs.

## WHOM SHOULD I CHOOSE TO BE MY ATTORNEY?

You should take great care in choosing your attorney because your attorney will have the power to make decisions of a highly sensitive nature. For a Power of Attorney for Personal Care, people often choose someone they trust like a spouse, partner, friend, parent or child. For a Continuing Power of Attorney for Property, people sometimes prefer those close to them who are good with finances, or professionals such as their lawyer, accountant, financial adviser or a trust company. It is advisable that you also choose a substitute attorney in case your initial attorney is unavailable or incapable of acting on your behalf.

## WHY WOULD I NEED A POWER OF ATTORNEY?

There is a common belief that your family automatically has the authority to make decisions on your behalf if you become incapable of making decisions on your own. This is not necessarily the case. For example, relatives who want to be appointed your attorney for property must make an application directly to the

Office of the Public Guardian and Trustee or to a court. People who are not relatives must make an application to the appropriate court. Those who apply to the court may be required to post security, draft a management plan, and regularly pass accounts.

#### **WHAT DOES IT MEAN TO BE MENTALLY INCAPABLE OF MAKING DECISIONS?**

Generally, if one cannot appreciate the consequences of a decision regarding one's personal care or property, or one cannot understand or process the information relevant to the decision in question, then that person is *mentally incapable*.

#### **CAN I LIMIT THE AUTHORITY OF MY ATTORNEY?**

Yes. You may want your attorney to buy or sell property that you own while you are out of the country but restrict the attorney from having any other powers. Or you may want your attorney to pay your bills and your taxes but not have the authority to manage your investments. You can also provide specific instructions to your attorney. For example, with a Power of Attorney for Personal Care, people often instruct their attorney to have their doctor remove them from artificial life support in the last stages of a terminal illness.

#### **CAN I REVOKE A POWER OF ATTORNEY?**

As long as you are mentally capable, you can revoke a Power of Attorney. The revocation must be in writing and properly witnessed. It is always advisable to seek legal advice so that the revocation is done properly.

#### **HOW IS A POWER OF ATTORNEY DIFFERENT FROM A LIVING WILL?**

A Power of Attorney names a specific person, or people, to act on your behalf without necessarily giving the attorney instructions on how to exercise their authority (although you do have the option of giving your attorney specific instructions). In a "living will", you give instructions regarding your treatment or how to carry on your affairs, but you do not need to name anybody specifically. A Power of Attorney gives discretion to the attorney to decide what they think is in your best interests, whereas a "living will" requires those in charge to follow your specific instructions to the best of their ability.

#### **AFTER I SIGN MY POWER OF ATTORNEY, WHAT DO I DO WITH IT?**

You should store your Power of Attorney in a safe place that's under your control. It is important that the person you have appointed as your attorney knows where to find your Power of Attorney. It is not advisable to store your Power of Attorney in a safety deposit box or with a financial institution because the documents should be easily accessible to your attorney when the need arises.

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