



LAFRENIÈRE SANNA
— ESTATE LAW —
A B O U T I Q U E F I R M

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Information About Powers of Attorney

There are two kinds of Powers of Attorney documents:

- Power of Attorney for Property;
- Power of Attorney for Personal Care.

In these documents, you legally appoint your “attorney” to make decisions for you. Although your lawyer might be appointed as your attorney, you will most likely appoint a trusted family member or friend to act as your attorney or substitute decision-maker.

A Power of Attorney for Property is a document which allows a person (grantor) to appoint another person (attorney) to act on the grantor’s behalf when they are not in a position to deal with their property and financial affairs. This may be due to illness or mental incapacity or because they are travelling. If a Power of Attorney is a continuing Power of Attorney, this indicates that it continues to be effective even if the grantor becomes mentally incapable.

A Power of Attorney for Personal Care allows a person to make medical treatment and personal care decisions for the grantor.

A grantor may appoint more than one attorney. Where there are two or more attorneys appointed, they must act jointly, or together, unless the Power of Attorney for Property says otherwise.

What Can an Attorney for Property Do?

If you grant a broad Power of Attorney for Property, the attorney can:

- pay bills;
- withdraw cash from bank accounts;

- open your safety deposit box and store or remove items from it;
- file income tax returns;
- sell your house;
- do anything that you can do with your property except make or alter your Will.

What Can an Attorney for Personal Care Do?

Depending on the extent of your mental incapacity, your attorney for personal care may make decisions about:

- your food, clothing, shelter, and personal hygiene and safety;
- your medical treatment and health care.

When do Powers of Attorney Take Effect?

Once signed and properly witnessed and if there are no conditions, a Power of Attorney for Property is effective as long as you are alive or until you revoke it in writing. Unless you put in a condition regarding mental capacity, a Power of Attorney for Property can be used as soon as you sign it.

After you sign, a Power of Attorney for Personal Care is valid but can only be used as follows:

- If your attorney has reason to believe that you are incapable of making personal care decisions to which the Health Care Consent Act does not apply (decisions concerning your shelter, clothing, hygiene and safety), the attorney may make the decision for you unless your Power of Attorney for Personal Care specifies that you must first be proven to be legally incapable;

- If the Health Care Consent Act applies to the decision (generally any medical treatment decision), you must be incapable of making the decision before the attorney for personal care will be able to decide for you.

Both the Power of Attorney for Property and the Power of Attorney for Personal Care stop being valid as soon as you die. After your death, your attorney no longer has authority to act. At your death, your Will takes effect giving your estate trustee (formerly called an "Executor") the authority to manage your affairs.

Your Will has no effect while you are alive. Some people mistakenly believe that the estate trustee appointed in their Will has authority to act as their attorney while they are alive. This is not true.

Choosing your attorney should be done with great care because of the power that you are giving him or her. You can appoint a trusted family member, friend, your lawyer, or a trust company to be your attorney for property.

You should appoint a trusted family member or friend who shares your moral/ethical views to be your attorney for personal care. Choose someone who will

respect your views and carry them out regardless of anyone else's objections.

In most cases, only one attorney at a time is appointed, with at least one alternate attorney who can take over when the first attorney is unable to act or dies. However, you can appoint more than one attorney to act at the same time and all of them must make decisions together, that is, "jointly". Alternatively, you can appoint several attorneys, each of whom can act independent of each other, that is, "jointly and severally". This is rarely a good idea due to the problems that are likely to result.

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