

EDUCATION



Legal Notes

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Power of Attorney for Property

Tom Cruise only had it half right when he immortalized the phrase, "Show me the money". He should have gone on to say, "Show me your Power of Attorney for Property." If you become incapable or unable to take care of your financial affairs and do not have a Power of Attorney for Property ("POA PPY"), you may create a very difficult situation for your loved ones.

Everyone, regardless of the amount or kind of assets they have, should have a POA PPY. Don't be confused by the use of the word 'attorney.' In Ontario, 'attorney' means 'substitute decision-maker' and not a lawyer like it does in the U.S.

In a POA PPY, you, the 'grantor,' can name one or more individuals or a trust company to act on your behalf when you are not in a position to manage your property and financial affairs. This may be due to mental incapacity, illness, physical limitations, or travel. Many people choose to appoint a trusted family member or friend while others choose their lawyer or a trust company. Be sure to name someone who is organized, trustworthy, conscientious, and financially astute.

If you grant a broad POA PPY, your attorney

can basically do anything that you can do with your property except make or alter your Will. So, for example, he or she can:

- pay bills;
- withdraw cash from bank accounts;
- open and remove items from your safety deposit box;
- file income tax returns; and,
- sell your house.

A POA PPY can be drafted so that it limits the attorney's authority to certain assets or actions. For example, if you are a business owner, you will likely have a POA PPY to deal specifically with your business interests and a general POA PPY to deal with all of your other property.

In order for a POA PPY to be legally valid, the grantor must be at least 18 years of age and have the requisite "mental capacity" when he or she gave instructions and signed the document. The standard of mental capacity to sign a POA PPY is very specific. In Ontario, the Substitute Decisions Act sets out the necessary criteria. The grantor needs to be able to answer a series of questions. Here are some of them:

What kind of property do you have and what is its approximate value?

Do you know that your attorney

must account for his/her dealings with your property?

Do you understand that unless your attorney manages your property prudently, its value may decline?

Once properly signed, a POA PPY remains effective while you are alive or until you revoke (cancel) it in writing. Unless the document includes a condition that requires you to be mentally incapable before it comes into effect, a POA PPY can be used as soon as it is signed. If the document is a continuing Power of Attorney, it means that it continues to be effective even while you are mentally incapable.

If you become incapable of managing your financial affairs and do not have a valid POA PPY, no one can manage your financial affairs. To do so, someone will have to seek guardianship of your property. This can be both costly and time-consuming. If you are unable to act due to an illness or accident, this can add another layer of stress and emotional turmoil to an already difficult situation for your loved ones. In certain circumstances where there is no POA PPY, the Public Guardian and Trustee will step in.

Without doubt, a POA PPY is an impor-

tant aspect of financial literacy. Show your family (and Tom Cruise!) just how financially savvy you are and get a POA PPY signed today.

Please note: Although this article focuses on Powers of Attorney for Property, this was not done to diminish its equally important counterpart, the Power of Attorney for Personal Care. We encourage you to seek the advice of an estate planning professional to ensure all of your estate planning documents are valid and up-to-date.

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