

## **POWERS OF ATTORNEY FOR PROPERTY**

### **What is a Power of Attorney for Property**

A power of attorney is a legal document in which you give someone the right to act on your behalf. In order to be effective a power of attorney must be properly drawn up, executed and witnessed. You can make two types of powers of attorney in Ontario, a power of attorney for property, and a power of attorney for personal care.

A power of attorney for property allows someone to do anything on your behalf regarding your property which you could do if you were capable, except make a will.

### **Your Attorney for Property**

The person who acts on your behalf using the authority of a power of attorney for property is called your attorney for property, or sometimes just your attorney. This is not to be confused with a lawyer, sometimes also called an attorney.

### **Who Can Be an Attorney for Property**

Anyone who is over the age of 18 years and is mentally capable can act as your attorney for property. You can name two or more people to act as your attorneys for property, and you can specify that they make decisions jointly or allow them to make decisions independently. You can also name the Public Guardian and Trustee as your attorney for property, if you obtain their prior written consent to the appointment.

### **When a Power of Attorney for Property Becomes Effective**

Your power of attorney for property is immediately effective upon signing, unless you specify in it another date when it is to become effective, such as, for example, when you become incapable of making decisions regarding your property.

You are incapable of making decisions regarding your property if you are not able to understand information that is relevant to making a decision in the management of your property, or are not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision regarding the management of your property.

You can specify any method you wish of determining when you are incapable of making decisions regarding your property in your power of attorney for property. If you

do not specify a method, an assessment must be done to determine whether or not you are incapable of making decisions regarding your property.

### **When a Power of Attorney for Property Ceases to be Effective**

A power of attorney for property can be either general or continuing. A continuing power of attorney for property allows your attorney for property to act on your behalf regarding property decisions even after you have become incapable of making such decisions, and is the kind most often made.

A general power of attorney allows your attorney for property to act on your behalf regarding property decisions only while you are capable of making such decisions, and ceases to be effective when you become incapable of making such decisions. Generally speaking, you would usually only give a general power of attorney to someone for a specific matter or for a limited time, such as for a specific investment account or to sign documents on your behalf while you are on a trip.

You can revoke a power of attorney for property or appoint a new attorney for property at any time. A power of attorney for property ceases to be effective when you die.

### **Compensation for Your Attorney for Property**

Your attorney for property is entitled to be paid to act as your attorney for property, unless you specify in your power of attorney for property that they are not to be paid.

### **Why Have a Power of Attorney for Property**

Many people believe that if they are incapacitated, their families will be able to step in and make decisions, but this is not true. Under Ontario law, no one can make decisions on your behalf regarding your property without being appointed to do so by you or a court. If you are incapable of making decisions regarding your property, and you do not have a continuing power of attorney for property, a court application to appoint someone to make these decisions on your behalf will be necessary.

Making a continuing power of attorney for property will ensure that the person you want to make decisions regarding your property has the right and power to do so. You can also appoint a substitute attorney for property, who can act on your behalf if your primary attorney for property is unable or unwilling to act on your behalf when the time comes.

**This memorandum is not intended to be legal advice, but rather to assist you in understanding powers of attorney for property. If you have specific questions, please feel free to consult us at 416-361-3231 or by email at [mail@odonohue.ca](mailto:mail@odonohue.ca).**

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