

The Ontario *Substitute Decisions Act*, which came into force in 1995, governs the way individuals can appoint others to make decisions about their finances and their personal care. Two legal documents effect these appointments. A “continuing power of attorney for property” relates to a person’s property and finances. A “power of attorney for personal care” relates to a person’s healthcare, nutrition, shelter, clothing, hygiene or safety.

Continuing Power of Attorney for Property

A power of attorney is a legal document whereby one person (the donor) appoints another person (the attorney) to act on the donor’s behalf, on terms specified in the power of attorney. A power of attorney may be specific (such as the authorization to complete a real estate transaction) or general (such as the authorization to do anything that can be done through an attorney). Although donors sometimes appoint their lawyers as attorneys, it is more common for the attorney to be a trusted relative (the donor’s spouse, adult child, parent or other close family member), colleague or friend.

A major advantage of a power of attorney for property is that it enables the attorney to manage and make decisions about the donor’s financial affairs if the donor loses the capacity to do so. Powers of attorney are generally drafted to take effect when signed (i.e., even before incapacity) and, if drafted properly, remain effective after the donor becomes incapacitated. If no power of attorney is in effect, the individual’s family must endure a time-consuming and expensive court process to obtain permission to manage the incapacitated person’s financial affairs.

A continuing power of attorney for property allows the attorney, without special procedures, applications or assessments, to manage the donor’s property once the donor becomes legally incapacitated. A general power of attorney executed before the *Substitute Decisions Act* came into force or within six months of the Act’s coming into force will be treated as a valid continuing power of attorney for property, as long as it was properly signed and witnessed and states that it may be exercised during any subsequent legal incapacity of the donor. General powers of attorney signed before October 3, 1995, should be reviewed. If it does not meet both requirements, the power of attorney can easily be replaced with one that meets the new requirements. If you are uncertain about the requirements outlined above, consult your lawyer.

Powers of Attorney for Personal Care and Living Wills

The *Substitute Decisions Act* recognizes the power of attorney for personal care. An attorney under a power of attorney for personal care can make certain decisions on behalf of the donor, about the donor’s healthcare (including the right to consent to or refuse medical treatment, if the power of attorney expressly states this right), nutrition, shelter, clothing, hygiene or safety.

The attorney for personal care need not be the same person as the continuing attorney for property. In fact, a standard continuing power of attorney for property does not authorize the named attorney to make personal care decisions. If there are two attorneys, it is important that the donor be satisfied that the attorneys will work together to carry out his or her wishes. For example, the attorney under the continuing power of attorney for property may be called upon to pay for a decision about the donor’s shelter—a decision made by the attorney under the power of attorney for personal care. An attorney for property is required to manage the donor’s property in a manner that is consistent with the nature of the decisions made about the person’s personal care (by the person authorized to make those decisions)

unless the adverse consequences of a property decision outweigh the benefits of the personal care decision.

A power of attorney for personal care can also permit the attorney to make decisions about the donor's personal care if the attorney has reasonable grounds to believe that the donor is incapable of doing so.

A major advantage of a power of attorney for personal care is that the donor can use it as a legally binding form of living will (if he or she includes in it the provisions of a living will). Another advantage of this power of attorney is that decisions by the attorney to consent to or refuse medical treatment will prevail over the wishes of others who may claim to have the right to make these decisions. **11**