

Power of Attorney Checklist

Under the Ontario Substitute Decisions Act, it is possible to appoint a power of attorney for property and a power of attorney for care. Forms for both Powers of Attorney for Property and Care are available through the Attorney General should you choose to prepare your own. If you choose this route, we caution you to ensure that all documents are signed properly. We charge a nominal amount for simple powers of attorney. We come across a large number of powers of attorney which were done privately by clients but which are invalid for any number of reasons. Typically you will not know if the power of attorney will not work until the attorney goes to use it, which is usually after the donor has become incapacitated and it's too late. We strongly recommend you allow us to review your Powers of Attorney or prepare them, often at the same time as we do the will.

Power of Attorney for Property

The Power of Attorney for Property allows someone or a group of people (either jointly or individually) to make financial decisions on behalf of the donor (the person make the Power of Attorney). It is typical to appoint the person who is the executor of your will as Power of Attorney but is by no means a requirement (in this respect please note that the word attorney refers to the person you are appointing to look after your affairs, not your lawyer). Powers of Attorney can be made conditional upon your incapacity but setting up a mechanism to prove your incapacity to third parties can be extremely complex and awkward. As a result it is our general practice to have the forms signed unconditionally. Please note that the Power of Attorney does not take away the donor's rights, it simply allows someone else to make decisions. All decisions must be made in the donor's best interest. The Power of Attorney terminates when the donor dies, when the donor executes another Power of Attorney or when the donor specifically renounces their Power of Attorney.

Power of Attorney for Care

The Power of Attorney for Care allows the "attorney" to make health care decisions on behalf of the donor. These can only be done if the donor is not capable to making health care decisions for him or herself. At Dashwoods we typically we incorporated the "living will" with the Power of Attorney for Care.