

The **POWER** of ATTORNEY PROJECT

Podcast title: Granting someone authority over my finances, the current law in Alberta on Powers of Attorney

Welcome to the Power of Attorney Podcast which is part of our Conversations that Matter Podcasts. My name is Mary Bart, Chair of Caregiving Matters. This podcast is intended to provide general information only and is not intended to be a substitute for seeking personalized legal, financial or other advice. This podcast raises issues that our audience can further explore on their own in their own local communities with their own local experts. This project will help to be a call to action for families to solve their issues, find solutions to their problems, and have greater peace of mind.

Our guest expert is lawyer Arlene Blake.

Here is our conversation:

What should I do to ensure my finances are taken care of in the event I lose the ability to manage them on my own?

I often tell people that there are different ways that someone might become unable to manage their own finances. Someone might suffer a temporary illness, a more serious long term illness, or become immobile. The level of assistance you need will depend on the issue making it necessary for you to seek the assistance. It is fair to say that it is likely that all of us will require some assistance as we age. It is better to plan for an event, and if it never comes to pass nothing is altered, but if you do require assist in managing your financial affairs, planning can go a long way at easing the burden of family or caregivers. What needs to be remembered is that even the person with a life that appears very simple and uncomplicated may need to have someone manage their finances, paying the utilities, or the rent.

Officially, or legally, naming someone to stand in your place to manage your finances is the most simplistic way to ensure your affairs are appropriately managed when you are unable to do so. To do this you must complete a document that names the person you choose to act on your behalf.

What is the name of the document created for this purpose?

Here in Alberta, the Powers of Attorney Act allows someone to name another person to manage their financial affairs, in a document called a Power of Attorney. There are different types of power of attorney documents. You can appoint someone to act immediately on your behalf (under the Act you are known as the donor – donating your power to someone else, you can have some act immediately and provide that their appointment would carry on, or endure, beyond the time you lose capacity, and you might also decide to only appoint someone to manage your affairs when you are incapable of doing

so, this is sometimes called a springing power of attorney, as it is only effective, or springs into effect, at the time capacity is lost. In this case you may name the person who would determine that you have lost capacity, and if no one is named, then two medical practitioners will have to declare you as lacking mental capacity.

How do I decide who to give the power to, and what is that person called in the document? What if something happens to my Attorney?

The person named to manage the finances of another is called an “Attorney”, but the job they perform for you, on your behalf, does not require them to be a lawyer, or accountant, or any particular profession. It should, however, be someone you trust over the age of 18, who you believe has the ability to manage your finances and who you also believe will act in your interest for as long as you may need. It is always best to have the person you are choosing agree to act as your attorney prior to naming them in the Power of Attorney document. You can also name more than one person to act on your behalf, you can appoint an alternate, or you can choose to have two people act jointly – keep in mind that you would likely want two people working together to live in the same location. In Alberta, the court does not have the power to name an alternate or substitute

Can I give authority to someone when I still have the mental capacity to make my own decisions, but no longer have the same mobility?

Yes, as mentioned above, you can appoint someone to act on your behalf at anytime, as long as you have the capacity to appoint someone. An attorney must always act in the best interest of the person who appointed them, and the attorney should always take into account the wishes of that person. The prospect of having an attorney, for someone with capacity, does not mean that they are unable to make choices concerning their finances, just that someone else may have to carry out the actions on their behalf – attend at the bank, or make a phone call.

What duty does the Attorney have towards me and my finances?

In general, if you are appointed an Attorney, your responsibilities can be described as follows;

- To act in the best interests of the donor. Under Alberta legislation, this also includes a duty to protect the donor’s best interests.

To consult with the donor, with those who take care of the donor, and with the donor’s family and friends.

- To use the donor’s assets first for the donor’s support and care; then, if assets are available, for the support of the donor’s dependants.
- In certain circumstances, an Attorney can make gifts or loans to relatives, and gifts to charity based on the donor’s previous practice and intentions (but the Power of Attorney must specifically give this power).

- To obtain a copy of the donor's Will and information about the donor's assets and liabilities (others who have this information must provide it to you).

- To keep accounts and give an accounting when called upon to do so. This includes lists of:

- assets as of the date of the Attorney's first transaction;

- assets acquired and disposed of and the date and particulars of each transaction;

- receipts and disbursements and the date and particulars of each transaction;

- investments bought and sold and the date and particulars of each transaction;

- liabilities as of the date of your first transaction;

- liabilities incurred and paid and the date and particulars of each transaction; and

- payments taken by you and how they were calculated.

- To keep a copy of the Power of Attorney and of any court orders relating to your authority.

- To keep these records until:

- you cease acting for the donor and until you receive a release from someone authorized to give it;
or

- until another person acquires authority to manage the donor's property and you give the records to that person.

- If the donor dies, to give the records to the donor's Executor.

- If required, to apply to the court for advice and direction regarding any of these matters.

Is there anything I should do in order to make the job easier when the time comes?

You should consider asking the donor to:

- keep an up-to-date, detailed record of all that s/he owns and owes and let you know where this updated list can be found;

- if she or he has property outside of Alberta, ensure that the Power of Attorney will be accepted in that jurisdiction (and, if not, to make another Power of Attorney that would be valid in that jurisdiction);

- explain his or her plans to family members, the beneficiaries, or anyone who may be affected by your appointment as Attorney; and

- let you know of any updates or changes to his or her Power of Attorney, Personal Directive, and Will (have him or her give you copies of any such documents).

What if I don't want my Attorney to have unrestricted powers over my finances?

You must provide that restriction in the Power of attorney document. For instance, if you are leaving your house to a loved one upon your death, you may not want it sold by the Attorney, you should say so in the document.

Can I revoke the document? And if so, how?

You can revoke a Power of Attorney at any time as long as you have the capacity to do so. You can complete a document that officially revokes the Power of Attorney, or if you are making a new Power of Attorney, the new document will revoke the older document. Remember also that a Power of Attorney

is no longer valid at the death of the donor, once the maker of the Power of Attorney passes away, the Will will govern the affairs of that person.

Mary- Thank you very much for that and again I would like to wrap up by thanking you Arlene for joining us and today Chris Kata, who is from our board of directors, have a few closing comments.

Chris - Mary, who are our initial project supporters?

Mary – We wish to acknowledge that this project is funded in part by the government of Canada's New Horizons for Seniors Program. Our other initial supporters include Care Connect, The Care Guide, The Healing Cycle Foundation and Scotiatrust. Caregiving Matters is an internet based registered Canadian Charity dedicated to educating and supporting family caregivers. 90% of our work is done online and by leveraging technologies. 10% is done by producing local educational events. We leverage technologies in everything that we do ensuring greater reach and sustainability. I trust that we have given some of the highlights of our exciting new initiative. If you are interested in speaking with me about the project, please let me know. We look forward to your questions and your ideas.

Chris - Mary, if listeners have questions, what is the best way for them to contact us?

Mary Bart- You can contact me directly Mary Bart, Chair of Caregiving Matters at 905-939-2931. My email is mary@caregivingmatters.ca and our website is www.caregivingmatters.ca