

The **POWER** of ATTORNEY PROJECT

Podcast Title: Avoiding negative financial repercussions.

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.

Mary- Our guest expert is Patrice Graham Brown. She is the division director at Investors Group Financial services. She is also a certified professional consultant on aging and a registered retirement consultant. Welcome Patrice to the project.

Patrice- Hi Mary. Thank you first for this opportunity. I have had lots of situations in the last ten years of doing this kind of work with various different age groups in my client base and this is just a delight to be able to address some of these issues up front and should anyone want further information from me they can always reach me at my office here. The toll free number for here is 1-866-565-9996 and I'm at ext 340

Mary- Thank you Patrice. I do have a few questions for you so let's get started. My first question is, why should you have a power of attorney for property?

Patrice- It's interesting that a lot of people worry about their wills and make sure that gets covered. A will will help you when you are no longer here but a power of attorney will help you while you are still alive. People make assumptions that there is an automatic rollover so that if you don't have a power of attorney that the spouse or the children might automatically be able to fill in that roll but what they don't realize is that the family actually has to approach the public guardian trustees and most likely post a surety bond to be able to handle their parents or friends assets as time goes by.

Mary- So then my next question is, when a client loses their ability to decide who will manage their affairs what happens financially?

Patrice- The hardest part about this is everything gets locked up from the standpoint that they can't transact unless they have that power of attorney financial document that they can take to the bank in

order to be able to take care of financial matters. For example, being able to pay a mortgage, being able to pay the bills that are required for that person's liability. From a business perspective it could lock up a business and potentially have some really negative repercussions so that the business isn't able to go on and move forward because no one is there that can take that business on because there is no power of attorney.

Mary- You know that's a really scary thought for people because if you don't have these documents in place and let's say a loved one has a terrible stroke and they're not able to manage their affairs even the simple things about paying a mortgage or other bills become a problem because there isn't that power of attorney document and you must see this all the time.

Patrice- The scary part about the whole thing is because every time you want to be able to access funds because they are now with the public guardian or trustee, you have to go through this whole process and the courts don't actually have to have you as the power of attorney that's been added through the public guardian and they can pick whomever they think is available so for example Mary, they may put my daughter as the power of attorney whereas my son might be the better choice. You lose decision making power as to who is running your finances.

Mary- So then let's go to my next question. What is the difference between a power of attorney for personal care and a living will?

Patrice- A power of attorney for personal care allows the power of attorney to make decisions about the type of care that the person they are representing is going to have access to or is given in the case that this is invoked. It covers the health care decisions and is sometimes called a living will. It's a health care proxy or health care directive depending on the province but the term living will usually refers to the part of the document that outlines the donor's, the person granting the authority to the attorney, the type of actions that would be allowed.

Mary- Then my next question would be who should you choose to manage your property?

Patrice- Well from a power of attorney standpoint there are restrictions. Really you want to stick with someone who knows you financially or understand the scope of the issues you are needing to address, someone who is at least the age of majority, someone who has not filed for bankruptcy, someone who would not cause a conflict of interest. Those would look after all the considerations. The hardest part that I find is when a husband and a wife name each other as their powers of attorney and when they get up into their 80's or 90's, the person may not be able to deal with all the issues that come with power of attorney due to their age and level of health.

Mary- Perhaps where capacity might be questioned by both people. As we all age and the likelihood that more of us will have Alzheimer's or dementia then those are things we need to be considering.

Patrice- So when you do your power of attorney that's why it's important to consider not using a kit because you're assigning people in this kit and you don't know how to have a contingency person involved. When does the contingency person step in? How are you able to continue to make the

donations that you do every year? If you just use a kit and this information isn't addressed then what happens is the power of attorney kicks in and the person who you've given that person authority cannot do your donation in that tax year and all of a sudden your taxes just went up because you don't have all those deductions.

Mary- You know that's one reason we are doing this project is to say to people this is important business. It's complicated and sometimes a very difficult conversation to have so people need to go find a lawyer, in particular a lawyer who is skilled at this, sit down and talk about what their needs and wants are and the lawyer will help frame this for them and if at the end of the day this project has helped be a call to action for people to see their lawyers then that's great. People may have their wills but they may not have their power of attorney documents so we are saying to people listen and go find a lawyer and work through these things so thank you for mentioning the part about a kit. My next question is when does a court order for guardianship or power of attorney take effect?

Patrice- That's a good question because there are some myths out there about powers of attorney. The actual fact is that if you're signing a simple power of attorney as opposed to a contingency or springing power of attorney, it takes effect on the day that it is signed. The springing or contingent power of attorney which specify a different date or event for example a husband or wife, and the husband is out of town in Europe in business and they were going to sell their house that could be one of the terms to allow the wife or POA to transact in the sale of the house unless it's covered by the homestead act. Most people think as soon as they sign it they're giving away their power and that's not the case. So now as a power of attorney you can take that signed document to a bank and add the bank on the account but it doesn't necessarily mean you can start running the person's finances for them because the person is dealing with different institutions that are dealing with them and know them.

Mary- My final question for you is, when is a power of attorney for property terminated?

Patrice- Well there's a whole lot of reasons where it could be terminated. If the person who is power of attorney dies then it's automatically terminated or if the person who granted the power of attorney dies then it's automatically terminated because this is where people get confused over powers of attorney and executors. A lot of people think because they are an executor that they are a power of attorney. They're not the power of attorney for the estate until the person passes away. If the donor, the person giving away the power becomes incapable, unless he has a continuing and enduring power of attorney, another reason why you want to get a proper lawyers' opinion after getting a power of attorney because if the power of attorney dies and a substitute power of attorney was not appointed, and another reason why you should go that extra step is for example if the power of attorney loses their capacity and a substitute hasn't been appointed or if the power of attorney renounces or resigns from their position, or if the donor revokes the power of attorney but we have to be careful in different provinces because you can have multiple powers of attorney. In Ontario only, if I draft an enduring power of attorney this very action revokes previous powers of attorney. If springing or contingency powers of attorney have a date set to expire and it passes, then it is revoked or if for example or if the court for example revokes a power of attorney and sometimes that happens if they feel some other things are going on then they will invoke their right to do that. It can also go to committeeship and

there's a whole lot of reasons when a power of attorney can be revoked or suspended and when it comes to committees it could be given to committee to make the decisions so it gets to be very difficult and convoluted and most people when they sit in front of me they look at me like a deer in the headlights and my job is to sit down and figure out what it is they need and help them navigate these landmines that are out there and in a lot of cases, I will actually go to the lawyers with them to make sure that everything they want to have covered is addressed when they are there so it's part of the planning process. Does that make sense?

Mary- yes it does and it really says that depending on your family situation that it may be more complicated than you can ever imagine. We're trying to tell a person is don't get into trouble. Talk with your financial advisors so that you don't get in a situation where you end up saying if only I had done this or know that. What you have said speaks to how important all these issues are and what you've added here today is based on you working with your clients and I know you have worked with a lot of seniors. I'm sure you have seen situations that have worked out really well and I'm sure you have seen situations where you have turned families upside down if only they had been more proactive with their affairs.

Patrice- That's very true and what else they have to be aware of as people that are going through this process is that if you have made someone power of attorney please tell them because that's one of the hardest parts of all of this is when people don't know if they are a power of attorney for property or personal care and it's the same with wills they don't know and all of a sudden they're standing in front of me asking what do I do now?

Mary- I'm sure you guide them through it but they're stressed and if they are in front of you it's because something has happened and people usually are dealing with terrible circumstances so if they can be mindful enough to be proactive then they can deal with that and have the documentation in place to know what their role is then it's less of a learning curve for sure. Well Patrice I'd like to thank you for joining our project. Can you please share your contact information with our audience?

Patrice- The best place to find me is at the office and that is again the toll free number at 1-866-565-9996 and I'm at ext 340. You can try and google me and find me at Patrice Graham-Brown at investors group and you will find me.

Mary- I would like to wrap up with some closing remarks and that is that Chris Kata, one of our board of directors and I would now like to share 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