



# Powers of Attorney

What you  
Need to Know

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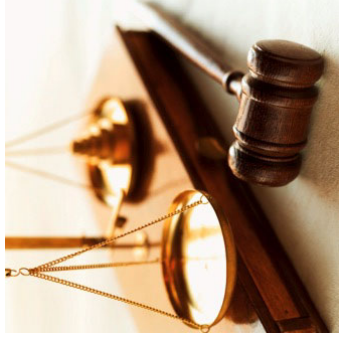
# Today's Agenda

- What ?
- Where ?
- When ?
- Capacity/Consent
- Who ?
- Compensation
- What if's



# What is a Power of Attorney?

- **Definition:**
  - a legal document that gives
  - someone else the power
  - to act on your behalf
  - while you are alive



- **Fiduciary:**
  - law requires the POA to act only in the
  - best interests of the Grantor – loyal,
  - honest



# Ontario Powers of Attorney



- **General Power of Attorney**
  - Manage finances & property only while Grantor is mentally capable – laws changed in 1996 – no longer used
- **Continuing Power of Attorney for Property**
  - Property = money, home, anything you own
  - Continues while mentally capable and incapable
  - Can do almost anything with your finances & property you can do – daily banking, sign cheques, investment decisions, buy or sell real estate – while alive
  - Cannot make or change your Will, appoint a new POA, change beneficiary designations

# Power of Attorney for Personal Care



- Personal Care = your health care, medical treatment, diet, housing, clothing, hygiene & safety
- Allows someone you trust to make personal care decisions for you only if you become mentally incapable of making some of all of your personal care decisions
- Also called Advanced Directive, Living Will
- Substitute Decision Maker – SDM
  - If you cannot speak for yourself or become mentally incapable, law requires health care providers obtain SDM's consent
  - Wallet card



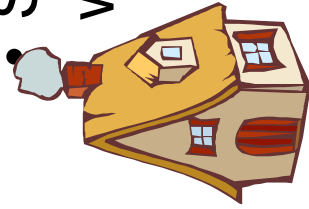
# Powers of Attorney



# When does a POA take Effect?



- **Property**
  - as soon as it is signed and witnessed
  - can stipulate to take effect at later date
  - can name more than one
    - Jointly – must agree on a decision – one cannot act alone
    - Jointly and severally – can act alone – should agree
    - Substitute – act only if first attorney not available or willing



# When does a POA take Effect?



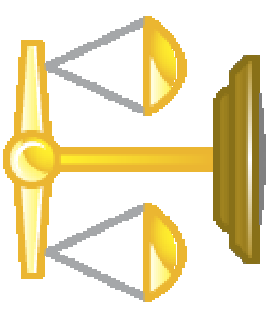
- **Personal Care**

- Only if you become mentally incapable of making some or all of your personal care decisions
- Can name your family doctor, a personal friend or capacity assessor to confirm your incapacity before POA takes over
- Record your instructions or wishes about your personal care and life support measures





# Capacity



- **Considered mentally capable if:**
  - Know what property you have and it's approx value
  - Aware of your financial obligations
  - Know what you are giving your POA the authority to do & certain they will act in your best interest
  - Understand there is always a risk POA will misuse their authority
  - Understand the information relevant to the decision **AND** able to appreciate the reasonably for-seeable consequences of the decision

# Capacity/Consent



- **Healthcare Consent Act, 1996 (HCCA)**
  - Healthcare practitioner – of the opinion patient is capable and has consented – doesn't have to be right
  - A person is presumed to be capable, unless reasonable grounds to believe otherwise
  - People are allowed to make bad decisions
    - Re C, 1994 and Bartoszek v Ontario, 2002



# Who Can you Name as Power of Attorney?



- Anyone you voluntarily choose
- Over age of 16 for Personal Care
- Over age 18 for Property
- Can be same person or different for Personal Care & Property
- More than one – joint or severally
- **CANNOT** be someone who is paid to provide you with health care or residential, social or support services (other than spouse)
- **2 Witnesses:**
  - **CANNOT** be spouse, partner, child, POA or their spouse/child, anyone who is incapable, anyone under

# POA Compensation

- **Personal Care**
  - not usually
- **Property**
  - entitled to be paid
  - percentage of assets, monthly payables/receivables
  - can stipulate certain amount or stipulate no compensation
  - if compensated must act with degree of care & skill of a professional



# What if I Don't Name a Power of Attorney?



- **Personal Care:**
  - ‘Representative’ – appointed by Consent & Capacity Board – anyone can apply – friends/family
  - Spouse or Partner
  - Child over age 16
  - Parent
  - Sibling
  - Other relative
  - Office of the PGT



# What if I Don't Name a Power of Attorney?



- **Property:**
  - Informally managed by family or friend
    - If no assets & only gov't pensions
  - Anyone can apply for Guardianship
    - Court prefers close relative
  - The Office of the Public Guardian & Trustee

# What if my Joint POA's

## disagree?



- Go to office of **Public Guardian & Trustee**
- PGT has duty to investigate any allegation (with reasonable grounds) an incapable person is, or at risk of, suffering serious adverse effects
  - losing significant portion of property
  - failing to provide necessities of life
  - deprivation of liberty or personal security



# What if I suspect POA misuse?

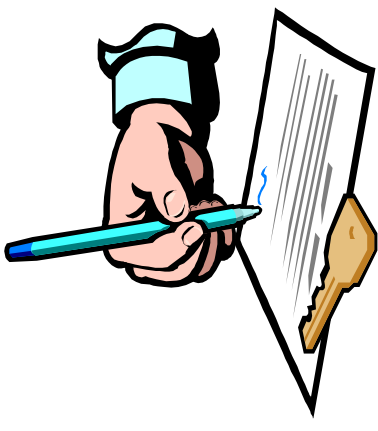
- **Guardian of Property – Fiduciary**
  - Honesty, integrity, for the grantor's benefit, comfort & well-being, encourage regular personal contact with family/friends and consult them
  - Limits on gifts, loans, charitable donations
  - Liable for damages resulting from breach



- **Request a Passing of Accounts**
- **Report to Office of the Public Guardian & Trustee**
- **Criminal Charges – theft or fraud – challenges**
  - **Seniors are allowed to make bad decisions**

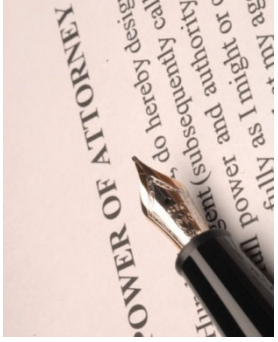


# What if my bank asks me to sign their POA form?



- Think carefully before signing
- Signing could revoke your own POA for Property
- If bank refuses to accept your POA
  - Speak to Supervisor or Lawyer





# In Summary

- Very Powerful Document
- Keep in safe place
- Never sign a POA under duress
- Put safe guards in place if necessary
- Ministry of the Attorney General website



[www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca)

## Questions?