



# ACTING AS POA FOR PROPERTY

A Continuing Power of Attorney for Property allows a person (called the grantor) to appoint another person (the attorney) to act on the grantor's behalf. It is useful if the grantor is not in a position to deal with property and financial affairs due to illness or mental incapacity or because the grantor is travelling. A Power of Attorney is referred to as "Continuing" because it continues to be effective even if the grantor becomes mentally incapable.

A grantor may appoint more than one attorney. Where there are two or more attorneys appointed in the same document or at the same time, they must act jointly unless the Power of Attorney for Property says something different.

## What are my Duties?

If the grantor is capable, as his or her attorney for property, you will act under his or her direction as an agent. If the grantor is no longer capable, however, as attorney you become a fiduciary who must act according to the best interests of the grantor. If you are not being paid, you must manage the grantor's assets to the standard of care, skill, and diligence of a prudent person managing their own affairs. If you are being paid, the standard is higher – that of a person in the business of managing other people's affairs, like a solicitor or a trust company.

You must keep careful accounts (including copies of receipts, cheques, deposits, bills paid, etc.) of all transactions made on behalf of the grantor while acting under the Power of Attorney.

You must also:

- Try to explain matters to the grantor and encourage participation;
- Try to determine whether the grantor has a will and what it says; and
- Consult with the grantor's family and others close to him or her.

You can be held personally liable if you fail to carry out your duties conscientiously.

## Scope of Authority

As attorney, you can do anything relating to property and financial affairs that the grantor could do, except make or change a will. There are, however, limitations on your power:

- You may not delegate your authority to another person (without special authority);
- You cannot stop the grantor from dealing with his or her own property;
- Generally, you cannot dispose of property specifically mentioned in the grantor's will; and
- You are subject to any specific limits in the Power of Attorney for Property.

*Cunningham Swan offers a broad range of legal services to individual and corporate clients in the private and public sectors in Kingston and Southeastern Ontario. We welcome your inquiry: Cunningham Swan Carty Little & Bonham LLP, Suite 300, Smith Robinson Building, 27 Princess Street, Kingston, ON, K7L 1A3; Telephone: 613.544.0211; Facsimile: 613.542.9814; Email: [info@cswan.com](mailto:info@cswan.com). This factsheet does not constitute legal advice.*

As attorney, you must spend money on behalf of the grantor for the following:

- Support, education and care of the grantor;
- Support, education and care necessary for the grantor's dependants; and
- Debts and taxes of the grantor.

### Gifts and Loans

Provided there is enough to pay the necessary expenses, you can make charitable gifts on behalf of the grantor if such gifts are mentioned in the Power of Attorney or if there is evidence – such as prior years' tax returns - that similar gifts were being made while the grantor was capable. However, the gifts cannot total more than 20% of the annual income from the grantor's property. You may make gifts and loans to people only if the grantor, when capable, had expressed an intention to make the gift or loan.

### Can I be Compensated for Acting as an Attorney?

Unless the Power of Attorney says otherwise, you are permitted to take compensation for work you have done on behalf of the grantor. The regulations allow 3% of receipts and disbursements annually. In addition, you can be paid a care and management fee of 3/5 of 1% of the average annual value of the assets being managed.

Before taking compensation, you should prepare an accurate calculation showing the receipts and disbursements on which it was based. As a precaution, you should get approval from the grantor (if capable) or from the executor in the will or the court.

### Termination of Authority

A Power of Attorney ends when:

- the grantor dies;
- the attorney dies or becomes mentally incapable;
- the grantor becomes bankrupt;
- the grantor signs a new Power of Attorney; or
- the grantor revokes or cancels the Powers of Attorney in writing;

The Power of Attorney itself may put a time limit on your power. As attorney you can also renounce by giving notice to the co-attorney or substitute attorney, the Office of the Public Guardian and Trustee and the institutions where you conducted business for the grantor. At that time you may be called to account for your dealings with the grantor's assets.

Powers of Attorney are increasingly the subject of litigation, and you should consult a lawyer before undertaking any but routine transactions on behalf of a grantor.