

# POWERS OF ATTORNEY

## **Powers of Attorney are just as important as a Will in Estate Planning.**

There are two kinds of Powers of Attorney in Ontario: (1) Continuing Powers of Attorney for Property, and (2) Powers of Attorney for Personal Care, which deal with medical and personal care matters. Powers of Attorney are governed by the *Substitute Decisions Act* – they allow you to appoint someone (your “attorney”) to make decisions for you as your substitute.

Wills and Powers of Attorney are complementary documents. Powers of Attorney are good as long as you are alive, but they die with you. At that point, your Will (which has no force and effect until you die) takes over.

You may have heard about “living wills.” You cannot make a legally binding living will in Ontario, but some of what you want to accomplish may be possible with a Personal Care Power of Attorney.

Never give a Property PA to someone you do not trust. It is a huge power, allowing the attorney to do anything with your property that you could do (except make a will). Your attorney may make gifts on your behalf – to family or to charity – so you may want to give some guidelines for gift giving. Your attorney can also be paid for the work he or she does: there is a scale set out in the regulations, but you can set your own fee. Finally, you can determine who has a right to call the attorney for Property to account.

Your attorney for Property has to be eighteen years old, but you can appoint a 16-year-old as your Personal Care attorney. Remember that acting on a Power of Attorney can be a time-consuming or heart-wrenching duty. Don’t ask more of your attorney than he or she can handle. Sometimes appointing more than one attorney is a good idea.

If you do not have a Property PA, no one is authorized to handle your estate for you. If you lose capacity, someone will have to make an application to be appointed your Guardian of Property. Your spouse, however, may continue to use a joint bank account in his or her own right.

If you do not have a Personal Care PA, and someone has to make medical decisions for you, the legislation says that decisions can be made by the first available of: (1) your spouse or partner, (2) your child or parent, (3) your brother or sister, or (4) any other relative.

The Attorney in a Personal Care PA has no authority to make decisions for you unless you are incapable of making your own decisions. The attorney on a Property PA, on the other hand, can act as soon as the document is signed and delivered (unless the document is restricted).

You may not want the same person to look after your finances and make your medical decisions. You can appoint different people on your two Powers of Attorney, but make sure that they can get along!

*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, 1473 John Couter Blvd., City Place II, Suite 201, Kingston, ON, K7M 8Z6; Telephone: 613.544.0211; Facsimile: 613.542.9814; Email: [info@cswan.com](mailto:info@cswan.com). **This factsheet does not constitute legal advice.***