

Topic 8

POWER OF ATTORNEY



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A power of attorney (POA) is a legal document that you sign to give someone you trust the authority to make decisions for you when you are not able to. You may want two different POAs:

1. To name someone to manage your money and property on your behalf when you are not able to.
2. To name someone to make health care decisions on your behalf when you are not able to.

The rules for POAs vary across Canada. Be sure to check with your province for information on how to create a legally enforceable POA where you live.



Would you like to learn more about POAs? Read:
Powers of attorney: What consumers need to know.

What's to talk about?

A. **When is it necessary to have a Power of Attorney and why?**

There are two main cases where you need a Power of Attorney (POA):

- You're going out of the country for an extended period and need someone to do your banking, pay your taxes and manage your other affairs while you're away.
- You need someone to make financial or health care decisions if you're mentally or physically unable to do.

You may want to discuss getting a POA with your family before you talk to your lawyer. Here's how to start a conversation about when you need a POA and why.

If you are parents of adult children:

- If you don't have a POA and are wondering if it's time to set one up, ask your child(ren) if they have one and why. Were there any particular scenarios they wanted to address with a POA? How confident are they that a POA will help make sure their wishes will be carried out and decisions made in their best interest?
- You can ask your child(ren) for help getting and filling out the required POA forms. Or talk to your lawyer about getting the necessary forms filled out.



- If you have a POA already, ask your child(ren) if they do too. If not, remind them that anyone at any age could be in a position where they need a POA. For example, they may want to leave the country and need someone to help pay bills. Or, they may be in a car accident or develop a serious illness that prevents them from managing their finances until they recover.

If you are an adult child:

- Talking about a POA may be very uncomfortable for your parent(s). They are used to making their own decisions and a POA represents handing over control, within set limits. It can be easier to talk to your parent(s) about POAs if you have one yourself. Let them know why you decided to put one in place and if you had any concerns in doing so.
- Reassure your parent(s) that putting a POA in place actually helps them keep control. The attorney they choose is obligated to act in their best interest.
- Also make sure your parent(s) understand that waiting to create a POA creates a risk. They cannot sign a POA if they become mentally incapacitated – which is when they will need it most. For example, what if they need to sell the family home after an illness incapacitates them mentally? This process would be much more difficult unless they have an attorney who could sign the documents on their behalf.

Ready to learn more? Read: **Understanding the different types of powers of attorney.**

B. **What are the top considerations when choosing a Power of Attorney (POA)?**

The person you name in your POA is called your attorney, but they don't have to be a lawyer or a family member. Any capable adult can take on the role. Here's how to start the conversation about finding the right person.

If you are parents of adult children:

- If you are thinking about naming your child(ren) in your POA, think carefully about how well suited they are to the role. Have they shown that they know how to manage money and property? Do you think they will manage your money and property or make health care decision in the way that you want and in your best interest? Can you trust them?
- Also consider if your child(ren) has/have any health concerns or financial problems that may interfere with them serving as your attorney. Do they have the time to handle your money and property as well as their own? Do they live nearby and are they readily available if you need them? Can you rely on them?
- If you think your child(ren) can fulfill the responsibility of an attorney, you can ask them if they would agree to take on the role. Make sure they clearly understand what is expected of them. Remember that if you have more than one child, naming one as your attorney can lead to hurt feelings. It can also lead to quarrels over decisions unless they get along and can work well together.



- You could also name a back-up attorney who will step in if your first choice can't fulfill the role when the need arises.

If you are an adult child:

- If you would like to be an attorney for your parent(s), it's important to start the conversation early – long before something happens to them and they can no longer legally create a POA. For the first conversation, you might just want to share stories where an attorney helps family members make decisions that follow the wishes of their parent(s).
- In another conversation, find out how much they understand about the role of an attorney and why they need one. If you have a POA, tell your parent(s) why.
- Ask your parent(s) to tell you their wishes, both for managing their money and property and making health care decisions if they are not able to do so. This can be done over several conversations.
- If your parent(s) are reluctant to discuss a POA, you could suggest that they talk to a lawyer or someone else they trust. They may not be comfortable talking about their POA with their child(ren).
- If you can't or don't want to be an attorney for your parent(s), it's best to be honest and direct. Let them know that if something happened to them tomorrow it would be very challenging for you to take on the duties of an attorney. Alternatively, discuss whether your parent(s) could name a back-up attorney who will step in if you find you can't fulfill the role when the need arises.

Ready to learn more? Use this **checklist** to help you choose your Power of Attorney or read **Choosing who will act for you.**

C. **Can you appoint someone other than a family member to serve as your attorney within your POA?**

You can choose almost any capable adult you want to be your attorney. They do not have to be family member or a lawyer. There are a few things to keep in mind, however. Here's how to start a conversation about your options.

If you are parents of adult children:

- If you want a non-family member to be your attorney, you could ask a close friend, a financial advisor or even a trust company. It's really all about finding someone you trust. However, note that for your POA for personal care, you cannot name someone who is paid to provide you with healthcare or other support services.
- You may want to let your child(ren) know if you are choosing a non-family member for your POA and explain why. They may feel hurt if you don't ask them to act as your attorney. Sometimes there's just a very practical reason not to ask your child(ren). They may live too far away. Or they may already have a lot to take care of with young children or a busy career.

If you are an adult child:

- Remember that your parent(s) don't have to talk about their POA with you if they don't want to. They also don't have to choose a family member to be their attorney. Try not to take it personally. It doesn't mean they don't trust you or love you, or that they like someone else better. They may be doing it simply to remove the added responsibility from your shoulders.

Ready to learn more? Read:
Choosing who will act for you.

D. **What happens if you don't choose a Power of Attorney (POA)?**

Normally your POA takes effect if you are not able to make decisions for yourself. If you don't have a POA, a family member or close friend can apply to the courts to be appointed as you guardian. But this can take time – and the person the courts name may not be someone you would choose yourself. This can just make a difficult situation even more difficult.

Here's how to start a conversation about what will happen if you don't have a POA.

If you are parents of adult children:

- You may be more comfortable first talking to your lawyer or family doctor about what will happen if you don't have a POA. They can share some scenarios from their experience that will help you understand the consequences.
- If you don't intend to have a formal POA, make sure you talk to your spouse, child(ren) and other close relatives about your wishes for personal care and for your property. They may have legal authority in a crisis to make decisions on your behalf or they may not. But at least they will know what you want.

If you are an adult child:

- Make your parent(s) aware of the main reason to get a POA: if they appoint an attorney, they can make sure it's someone they trust and who knows their wishes. You can also remind them that it's going to be hard enough on you when they are in poor health or unable to manage their own finances. If there is someone in place who knows their wishes and will carry out their instructions, it will make a difficult time a little easier.
- Make sure your parent(s) understand what might happen to them if they become unable to speak for themselves in hospital and do NOT have a POA. Hospitals must follow the law to figure out who will make decisions for you. There's no guarantee this person will be the one you would prefer.

Ready to learn more? Read:
**What every Canadian should know about
Powers of Attorney.**

E. How can a Power of Attorney (POA) be abused?

POA abuse occurs when someone is financially taken advantage of by the person they have named as their attorney to manage their finances. It's one of the most common forms of elder abuse in Canada. Here's how to start a conversation about avoiding this problem.

If you are parents of adult children:

- Learn about the steps you can take to prevent POA abuse. For example, your options may include:
 - Ask your child(ren) to help you set up automatic bill payments from your bank account.
 - Name two people to act jointly as your attorneys.
 - Name a trusted contact person if the option is available. This is someone you authorize your financial firm to contact if there is a concern about activity in your account and the firm has been unable to reach you.
 - Don't set up any joint accounts with your attorney.
 - Keep all valuables, financial and legal documents that you don't want your attorney to deal with in a safe place.

You can ask your child(ren) to help you with these steps to protect your property.

- Have regular conversations with your child(ren) about your financial affairs and any big decisions that are on your mind. The more they know, the more they can help you spot problems early.

If you are an adult child:

- Make your parent(s) aware of what POA abuse looks like. For example, an attorney may spend money without permission, to help themselves. Other forms of abuse may include forging a senior's name on the POA or coercing them to make a POA against their wishes.
- Offer to check your parent's/parents' accounts from time to time for potential problems. Or suggest they talk to a financial advisor or other professional.
- Suggest your parents name a trusted contact person for their investment accounts. This is someone their financial firm can contact if there is a concern about any account activity and the firm can't reach your parent(s).
- If you suspect POA abuse, gather as much information as you can and report it to your local senior abuse hotline. Or call police and ask to speak to someone trained in elder abuse.

Ready to learn more? Read:
Protecting seniors from financial abuse or What every Canadian should know about Powers of Attorney.



Let's Talk Money: Seniors Conversation Starters

Power of Attorney

Questions for you as an Older Adult

- I have heard that if something were to happen to me and I could not make decisions on my own that the courts or some bureaucrat would make decisions on my behalf. What can I do to ensure that my wishes are respected – if my decision-making capabilities are impaired?
- I have been giving a lot of thought to candidates for POA. What factors do you think I should consider in my choices?
- I don't want to cause any issues with you kids if something were to impede my ability to make decisions about my personal care or property, so I was thinking of exploring a non-family member as a possible POA. What do you think?
- Do you know what the most important things are to me when I think about my property or personal care?
- I am concerned that I may lose control if I name a POA. How can I protect myself?
