

What every older Canadian should know about

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PLANNING FOR POSSIBLE LOSS OF INDEPENDENCE



**FEDERAL/PROVINCIAL/TERRITORIAL
MINISTERS RESPONSIBLE FOR SENIORS**



Losing independence is not something that anyone likes to think about, but needing help making legal and financial decisions can happen at any time and for a wide range of reasons. If you get ill, have an accident or even if you are just away for a period of time, having someone you trust who is ready and able to help you can save time and trouble.

AMRITA'S STORY:

Soon after Amrita listed her home for sale, she had a stroke and was in the hospital for several months. Fortunately her son was able to help. When her husband died, Amrita had made a new will and a new enduring power of attorney that named her son as her decision-maker in case she was unable to make financial decisions on her own. During her recovery, he was able to complete the sale of her home using the enduring power of attorney.

How do I make a plan?

Planning can take many forms, but for many people the simplest thing is to make an enduring power of attorney (in some places called a continuing power of attorney). This is a legal document in which you name one or more people to be your “attorney” to manage your financial affairs. The word “attorney” in a power of attorney does not mean “lawyer.” It is just the legal name used to describe your decision-maker. What is special about an enduring power of attorney is that it can be used by your decision-maker

to manage your financial affairs even if you become incapable. Other powers of attorney will stop if you become incapable.

Making an enduring power of attorney is only a good plan if there is someone you can trust to look after your affairs if you can no longer look after them yourself.

What is the benefit of having a plan?

Planning ahead makes it clear who will be responsible for your financial affairs if you are not able to look after them yourself. It saves the difficulty and also the cost of making a family member or close friend go to court to get appointed as your decision-maker. It also avoids the need to involve the Public Trustee (sometimes called the Public Guardian and Trustee). For people who have no suitable family or friends, however, the Public Trustee can be very helpful and the fees are affordable.

Do I need to see a lawyer to make an enduring power of attorney?

It is a good idea to talk to a lawyer about making an enduring power of attorney (except in the Yukon, where it is always necessary). Because it is a very powerful legal document, it may be helpful to have a lawyer assist you, to ensure you understand its risks and benefits. A lawyer can also suggest various ways you can create your enduring power of attorney so that it will be both safe and effective.

Who should I appoint as my decision-maker in an enduring power of attorney?

If your financial affairs are fairly simple and you have a long-standing relationship with a trustworthy family member or friend, you can ask that person if they would be willing to be your decision-maker. You can also appoint two or more people who must work together to make decisions—but not if you think they will often disagree.

In some situations, you can appoint a trust company to deal with some or all of your financial affairs. You may also be able to appoint the Public Trustee of your province or territory. Before you do either of these, you must first ask.

The key is to plan wisely and safely, knowing that you are giving your decision-maker a great deal of power and responsibility over your financial affairs.

What if I don't make a plan?

If you become incapable of making decisions for yourself, there are laws in every province and territory that allow the court to appoint a decision-maker for you. While this is an important safeguard, it can be a costly process and it is likely you will end up paying for it. The court can also appoint a new decision-maker if the person you appointed dies or is unable to act. In some places, the Public Trustee may step in if there is no one else willing or able to help you, or if the Public Trustee thinks it is in your best interest.

Are there any risks in making an enduring power of attorney?

If you choose someone as your decision-maker who is not trustworthy, there is a risk that your enduring power of attorney could be misused. Your best protection is to make sure that your decision-maker is someone you have known for a long time and who you know is trustworthy.

What if I need help with non-financial decisions?

There are laws in Canada that allow people close to you to make health care decisions for you if you can't make them yourself. In some provinces and territories you can make a legal document naming someone to help you make health care decisions. A lawyer can tell you about making this kind of document.

TIPS AND SAFEGUARDS

Before signing a legal document (eg. enduring power of attorney), consult a lawyer to help understand the risks and benefits.

Let your family and friends know who you have named as your decision-maker in an enduring power of attorney.

Only name someone you know well and who has proven trustworthy as your decision-maker.

If your finances are complicated or you are unsure your friends or family can manage, consider appointing a professional as your decision-maker (eg. trust company or Public Trustee).

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2. Income and benefits from government programs
3. Managing and protecting their assets
4. Planning for possible loss of independence
5. Planning for their future housing needs
6. Having a will and making funeral plans
7. Financial abuse
8. Frauds and scams

Where can I find out more?

For more information, visit www.seniors.gc.ca or visit your local Service Canada office. To order additional copies of this publication, or for help finding a phone number in your province or territory, call 1 800 O-Canada (1-800-622-6232), TTY: 1-800-926-9105.

This document has been jointly prepared by the Federal/Provincial/Territorial Ministers Responsible for Seniors Forum. The Forum is an intergovernmental body established to share information, discuss new and emerging issues related to seniors, and work collaboratively on key projects.

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