



Powers of Attorney - Organizing your Financial Affairs

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Most people know that it's important to have a will, which is the legal document through which you appoint someone to deal with your property after your death. Many however, don't consider what will happen to their financial affairs in the event they are alive, but either physically or mentally unable to personally attend to them. This situation can arise in a variety of ways, such as while on vacation, losing mobility and capacity as one ages, or in the extreme, falling into a coma after being in a serious car accident.

In such circumstances matters are greatly simplified when people have appointed someone to manage their financial affairs on their behalf. This is where a Power of Attorney comes into play. A Power of Attorney ("POA") is a legal instrument through which one appoints another person (or persons) to manage his or her financial affairs. The person making the appointment is called the donor (or principal) and the person(s) appointed is the attorney (or donee).

Depending on the type of POA executed, the attorney receives either a general power (this allows them to deal with all financial matters the donor can legally deal with) or a specific power (this allows them to perform specific and limited acts). As well, a POA can either come into effect when it's signed, or when a specific event occurs, such as when the donor loses mental capacity.

The type of POA a donor chooses depends upon his or her individual needs. Most people however execute a general POA that comes into effect upon signing. This option is most commonly chosen because it covers all possible situations, from losing one's wallet while on vacation, to being mentally or physically incapacitated. It must be noted however, that an attorney doesn't start acting on the donor's behalf as soon as the document is signed. Rather, they start acting on the donor's behalf when the need arises. At our firm, this means that before we release a POA to an Attorney we require proof that our client either wants the attorney to begin acting, or is

physically or mentally unable to act on their own behalf. Depending on the circumstances, this information comes directly from the client, or from a third party such as a doctor.

With a general POA an attorney has a wide variety of powers. Just a few of these powers are: the ability to conduct the donor's banking (write cheques, pay bills, enter safety deposit boxes), deal with the donor's income tax, arrange for care, and selling a home or other property. For a complete list of an attorney's possible powers please see the *Powers of Attorney Act* of Manitoba.

An Attorney does not have total freedom however, but is obliged to act in the donor's best interest. In doing so, the attorney should keep detailed records of how he or she has managed the donor's money and belongings, as the donor may need to present these records to the donor's next of kin or before the courts.

When selecting an attorney we suggest that clients appoint

someone who is close to them both in proximity and in relationship, such as an adult child or sibling.

Once executed, a Power of Attorney is in effect until the donor either expressly revokes it, or upon his or her death, at which time his or her will takes effect.

As few people will stay healthy and active until the day they die, a power of attorney is an excellent investment that can ultimately save you and your loved ones both stress and money. For more information on powers of attorney please speak to a solicitor.