

## Powers of Attorney: Your safety net for life's surprises

July 2025

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While many individuals focus on what happens to their estate after death, it is equally important to consider how your personal care and financial decisions will be handled if you become unable to manage them yourself during your lifetime. Your power of attorney documents can create a safety net by allowing you to name someone to make these decisions for you.

### Understanding powers of attorney (POA)

A power of attorney (POA) is a legal document that allows you to appoint someone to make decisions and conduct transactions on your behalf. These documents have different names across the provinces, but there are two primary types of POAs:

1. **Power of attorney for property**<sup>1</sup> that allows your attorney to manage your financial affairs.
2. **Power of attorney for personal care**<sup>2</sup> that allows your attorney to make decisions regarding your healthcare, living arrangements, and daily activities.

<sup>1</sup> A power of attorney for property has different names across the provinces including: springing power of attorney, enduring powers of attorney, continuing power of attorney, representation agreement for property, and mandate

<sup>2</sup> A power of attorney for personal care has different names across the provinces including: advance directive, representation agreement, personal directive, health care directive, protection mandate, advanced health care directive and care directive.

## Get qualified legal advice

Creating a valid POA requires adherence to specific legal requirements of your province or territory. We recommend you consult with a legal professional in your jurisdiction to ensure that the document is properly drafted and executed.

Without a valid POA, if you become mentally incapable, a court may need to appoint a guardian or trustee to manage your affairs. This process can be lengthy and stressful.

## Choose the right attorney

Your attorney has a legal obligation to make decisions in your best interest. Your attorney for property has significant responsibilities, including managing your financial affairs and keeping accurate records of transactions.

When selecting an attorney consider the following:

- **Trust and confidence:** You should have complete trust in the person you appoint.
- **Proximity and availability:** An attorney who lives nearby can manage your affairs more effectively. If you have property in different jurisdictions, you should consult a legal advisor in each jurisdiction to consider whether you need multiple POAs and how these documents will work together.
- **Financial knowledge:** Look for someone with a solid understanding of financial management.
- **Ability to work together:** If you name more than one attorney or a different person as attorney for property and personal care, then make sure these individuals can work together.
- **Private corporations:** Where you have a private corporation, your choice may impact which corporations are related or associated for tax purposes.
- **Alternate attorney:** It is important to name an alternate if your attorney is unable to act. Consider naming a trust company or a person in a younger generation to increase the odds that they will be able to assist when you need them.
- **Professional assistance:** Consider appointing a professional trust company, such as CIBC Trust, as your attorney to help with financial matters. This may reduce family conflict and help with complex financial situations.

Selecting someone without sufficient financial knowledge or who may have a conflict of interest can lead to mismanagement or even financial abuse. It is crucial to choose someone who understands your financial goals and can act in your best interest.

Once you have made your choice it is important to let your attorney know about their appointment and when it comes into force. They should know where to locate them so that they can act when needed.

## Customizing your POA

You can provide your attorney with guidance to follow in making decisions on your behalf.

Your POA for property can include guidance on:

- The types of investments your attorney can make
- Whether your attorney will be compensated for their services
- Details regarding support for your dependents
- The ability to give gifts to charity or loved ones.

Similarly, your POA for personal care can include your preferences for:

- Where you want to live
- What you want to eat and wear
- Guidance on your health decisions.

We recommend you review your POA from time to time to ensure it reflects your current wishes and circumstances.

## Joint accounts

Don't make the common mistake of relying on informal arrangements such as making your accounts joint accounts with a family member. Adding a joint account holder does not give them the ability to help you with important financial matters, such as selling your house or contracting for long-term care. Your POA for property can take care of most financial matters, other than making a will.

Adding a family member to your joint account may also lead to misunderstandings and unintended consequences. Joint account holders may have full rights to the funds your joint account. Issues can arise as to whether they hold the funds for your benefit or not. This can result in disputes over the joint account if one of the joint owners gets divorced or separated. Similarly, after you pass, it may be unclear whether you want the funds to go to the joint account holder or go to your estate to be divided up among your other beneficiaries.

## Conclusion

Planning for potential incapacity is a critical aspect of estate planning that should not be overlooked. Naming attorneys for property and health care you can provide peace of mind for you and your loved ones.

For more information about establishing a Power of Attorney or other estate planning services, please contact your CIBC Advisor and consult with your legal professionals.

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