



Money Management Goal Setting
Retirement Planning Estate Planning

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Power Of Attorney *...Why It's Important to You*

A Power of Attorney (POA) is a document that allows an individual to appoint an agent to act on their behalf if they ever become mentally or physically impaired. Although a POA is a useful tool in the event such impairment might happen, the POA may be open to abuse and may not fully satisfy the needs of the individual. A POA can be easily downloaded off the internet at no cost but it is highly recommended that this document is drafted by a professional lawyer. The fee to have a Power of Attorney prepared is minimal, and it can be prepared in conjunction with updating a will. Some areas that an unsophisticated POA might not touch upon may include:

- 1) How issues of abuse of the POA can be resolved if a third party believes that it is being abused.
- 2) Accountability toward inappropriate behavior.
- 3) How to handle compensation issues that may arise for the time and effort to manage an individual's affairs.
- 4) Personal care issues may not be addressed.
- 5) Who will act in place of an appointed individual who is unable or unwilling to carry out their responsibility due to death, illness or disinterest.

and one covers personal care. It is good to take note that provincial laws provide the legal foundation for these documents and that there may be slight differences in each province.

Power of Attorney for Property

A Power of Attorney for property covers a number of items such as the individuals banking and investment, filing tax returns, paying outstanding bills, taking physical possession of property to ensure safekeeping, buying or selling a home, and gaining access to the individual's will.

There are two types of POAs for property in Ontario. These are known as the 'standard' or 'general' power of attorney which is authorized by the Power of Attorney Act, and a 'continuing power of attorney' which gets its authority from the Substitute Decisions Act. The main difference between these two types of POAs is that a 'standard' POA will no longer be applicable if the individual becomes mentally incompetent, unlike a 'continuing' power of attorney which is valid even in the event that an individual does become mentally incompetent. In the case that a 'standard' Power of Attorney is used, the point at which an individual becomes mentally incompetent becomes critical to the eligibility of the POA.

Each province has legislation to deal with complicated

Types of Powers of Attorney

There are two different types of Power of Attorney. The first one deals with property issues and the sec-

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situations in which the individual has become mentally incompetent and does not hold a 'continuing' POA. There are some general guidelines that can be followed if such a situation should arise:

1. The individual will be assessed to be mentally incompetent based upon a medical opinion
2. The court will select a guardian to act on behalf of the individual.
3. A family member, friend, or even creditor can be appointed by various people who petition to the court.
4. The courts will select a guardian based upon the best interest of the individual, the guardian who is eventually appointed is not necessarily the individual who applied for guardianship.
5. A public trustee may be appointed if no one is willing to act as a guardian.
6. The appointed guardian may be required to file certain information with the courts.

Power of Attorney for Personal Care

The POA for Personal Care is a document that appoints an individual to make decisions concerning your personal care if you are unable to make such decisions on your own, due to a physical or mental disability. Under the personal care POA, the guardian may be faced with responsibilities such as health care, shelter, nutrition, and giving or refusing consent for medical treatments. In the most extreme case, the holder of the POA for your personal care is assigned the right to 'pull the plug' on Life Support equipment that is keeping you alive.

Some issues that may arise in regards to your personal care may include:

1. A power of Attorney for personal care was never prepared.
2. More than one individual was assigned the responsibility of guardianship.
3. A guardian is appointed, but has no direction as to what decisions should be made because of your lack of communication regarding your wishes.

In the event that a Power of Attorney was not prepared and a doctor required consent to perform a specific procedure, and the patient was incapable in making that decision, the pecking order for consent would be prioritized as follows:

- Guardian
- Representative appointed by the court
- Spouse
- Parent or Child
- Brother or sister
- Other relative

Although the above list is not written in stone, it does create problems between two individuals who have equal status and can't come to an agreement on a decision. An example would be of children who could not agree on the appropriate care for their widowed parent who could no

longer care for themselves.

It is common to appoint two individuals for the responsibility of making personal care decisions in case one individual is unable or unwilling to make the necessary decisions. In situations where both individuals are unable to come to consensus on the appropriate health care decision such issues can be resolved by granting one person veto power or allowing the family doctor to resolve the dispute.

In the event that a power of attorney for personal care is drafted but there is little guidance as to the wishes of the patient in certain circumstances, the representative of the POA may face a moral dilemma. Whether, they should consult with the family, seek medical advice, or rely on their own wisdom. In order to resolve such an issue, it would be wise to provide written direction for your representative by touching upon different scenarios and what decisions should be made, whether the decision is specific or to seek professional medical advice.

Using a Power of Attorney

A power of attorney is most commonly used in the following three situations:

1. In the unfortunate event of physical impairment during an individual's working years.
2. Mental or physical disability in the final years of an individual
3. Managing the financial affairs during an extended stay outside the country. An example would be a power of attorney controlled by the parents, allowing them to handle financial transactions for their son who is temporarily working outside the country.

In the case of spouses, a power of attorney should be acquired in the event that one of the spouses is involved in an accident or suffers a stroke. If bank accounts were in the husband's name and the husband was incapacitated, the wife would not be able to have access to funds without either a power of attorney or intervention of the courts. Later on in life the focus often shifts from physical impairment to mental incapacity which becomes more complex. If the power of attorney comes into effect upon mental impairment, it is difficult to determine if an individual is mentally capable or not because mental conditions are not always obvious. Some factors that should be taken into consideration with ageing individuals include:

1. Mental incapacity may be temporary.
2. Mental impairment may develop gradually and may affect different areas of an individuals mind. They may be capable in dealing logically in some areas and not others.
3. Who should be the judge whether an individual is mentally incompetent, for example the family, doctor, or the courts?

Rather than be subjected to a court appointed guardian, an individual is in a more superior position to have an enduring power of attorney drawn up, allowing them to choose a guardian who would serve their best interest. An enduring POA allows individuals to control their financial affairs if they ever were to become mentally incapable of making sound financial decisions.

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Tax Matters

Making the most of capital losses

You've got to wonder about your ability as a manager of people when those who report to you send you an e-mail with the subject: "Prison is better than work."

Just such an e-mail appeared in my inbox this week, sharing the following insights:

1. In prison, you spend the majority of your time in an 8-by-10 cell. At work, you spend the majority of your time in a 6-by-8 cubicle.
2. In prison, you get time off for good behavior. At work, you get more work for good behavior.
3. In prison, you get three free meals a day. At work, you only get a break for one meal, and you pay for it yourself.
4. In prison, you can watch TV and play games. At work, you get fired for watching TV and playing games.
5. In prison, you get your own toilet. At work, you have to share with a guy who drips on the seat.

Talk about seeing the silver lining in the prison cloud. How are you at looking on the bright side these days as an investor?

As investors, the dark cloud of the market has been hanging over us for some time. Can you see the silver lining? Is there some way we can make lemonade out of the lemons the market has handed us this year? You bet. Just deal with your capital losses properly.

The carryback

It's no secret that any capital losses you've realized can be offset against any capital gains in order to save you tax. If you've triggered capital losses in 2002, those losses must first be applied against any capital gains you have this year (yeah, as if), and can then be carried back up to three years, or carried forward indefinitely, to the extent that you can't use them this year.

Here's the critical point: These past few months of 2002 represent your last chance to trigger a loss that can be carried back to 1999. Capital gains in 1999 were taxed at higher rates than capital gains today, so you'll generally save more tax by triggering capital losses this year and carrying them back to 1999 than you will by using those losses in other years.

You may recall that, prior to Feb. 28, 2000, three-quarters of a capital gain was subject to tax, whereas just one-half of any gain is taxable today. In fact, any capital gains realized after Oct. 17, 2000, are subject to that 50-per-cent inclusion rate.

What difference can this make? Suppose you live in British Columbia and have a \$40,000 realized capital loss this year. If you apply that loss against capital gains realized this year, you'll save \$8,740 in taxes, if you're in the highest tax bracket. On the other hand, if you're able to carry that loss back to 1999, you'll save \$15,687 in taxes as a result of that same capital loss. That's an additional \$6,947 you would save carrying your loss back to 1999, if possible. Regardless of your province of residence, you'll generally find yourself better off applying your losses to 1999 where you can.

The estate plan

Why not take advantage of your capital losses and do some effective

estate planning at the same time? Consider giving your children some of your investments that have dropped in value. Doing this will accomplish three key things:

1. You'll trigger losses you can use. When you give those investments to your children, you'll be deemed to have sold them at fair market value. Since they've dropped in value, this will trigger a capital loss that you can use. The loss won't be denied under the superficial loss rules because your kids aren't "affiliate" with you under Canadian tax law.
2. You'll accomplish an estate freeze. An estate freeze involves passing the future growth of an asset to someone else—often the kids—so that they will be taxed on that growth, not you. The drawbacks of this method of freezing an estate is that you'll no longer have control over those assets, and you won't be entitled to an income from them, either. Nevertheless, you'll avoid tax during your lifetime and at the time of death on any future growth of the investments. If you're concerned about the control issue, talk to a tax pro about other methods of freezing an estate.
3. You'll minimize probate fees. If you live in a province where probate fees are levied, you'll avoid those fees on any assets you give away during your lifetime.

The name of the game? Making lemonade out of lemons before the end of this year.

Source: Tim Cestnick
AIC Limited

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A power of attorney is distinct from a will in that a will becomes effective upon death and the power of attorney ceases to have authority. An estate plan should take into consideration the transition of your estate from the power of attorney and whether the appointed guardian of the POA should be the executor of your estate.

Potential Problems Related to Powers of Attorney

A Power Of Attorney gives the authoritative right for a third party to manage your financial affairs, but unfortunately, it does not ensure that your finances will be managed in accordance to your wishes. Two potential problems that should be taken into consideration when appointing a guardian for your power of attorney, the holder of the POA may abuse the power that has been entrusted to them or acts in a manner that is inconsistent with your wishes. These problems can occur when instructions as to your goals and objectives were not clearly stated in the POA document. The Power of Attorney gives the right to an appointed individual to conduct the financial affairs of another, but it doesn't guarantee that the individual's wishes will be carried out. The appointed agent of the POA may not consistently carry out the wishes of the incapacitated individual. In a lot of cases the power of attorney is signed, but there are no clear cut instructions as to how the document should be utilized. Some areas in which the designate agent might have difficulty making decisions would be whether to sell the family home, how best to manage investments, whether assets should be distributed to beneficiaries named in the will before the death of the individual if there is a tax advantage, and whether gifts or loans should be made.

Avoiding Abuses to the Power of Attorney

The person designated as the agent of the Power of Attorney may choose to abuse the responsibility that has been entrusted to them. That is why it is very important to grant this power to a trusted individual who will look after your best interest. In order to guard your assets and your well-being from being abused, it is wise to employ a number of safeguards to reduce any opportunities for abuse. The following are a number of ways that can safeguard your assets when using a POA:

1. Prepare the power of attorney through a lawyer.
2. Provide specific instructions that dictate the terms of the power of attorney for issues such as loans, gifts, investments, sale of your home, etc.
3. Consider appointing two individuals to have the power of attorney, specifically instructing that they cannot act independently of each other.
4. Keep the original power of attorney and letter of instruction in the possession of a reliable third party, such as a lawyer.
5. Decide whether the POA should be absolute or contain restrictions.
6. Consider advising a trusted friend or relative on the terms, conditions, and restrictions that apply to the POA.

7. If compensation is an issue, make specific references as to how the individual who is delegated as the agent of the POA should be compensated when the document is exercised on your behalf.

It is quite likely that either you or a family member will be unable to manage your own affairs at some point in the future. To avoid your financial affairs as well as your personal care from being handled by the courts or by a public trustee, it is highly recommended that a power of attorney is prepared. If you already have an existing POA, it should be reviewed with your lawyer from time to time to ensure that the information is current with any changes in your personal circumstances or revisions to the laws in your province.

Mortgage Rate Update

(as of December 2, 2002)



Lender/Broker fee may apply to non-traditional applications

*Mortgage rates quoted for first mortgage as of
December 2, 2002*

Term	Posted Bank Rates	Our Best Rates
6 MONTHS	5.55%	4.55%
1 YEAR	4.90%	3.90%
2 YEARS	5.60%	4.60%
3 YEARS	6.00%	4.75%
4 YEARS	6.45%	5.20%
5 YEARS	6.70%	5.45%
7 YEARS	7.55%	6.05%
10 YEARS	7.90%	6.20%

Mortgage rates provided by
Karen Hall, Invis Financial Group