

UNDERSTANDING THE LEGAL DIMENSIONS OF FINANCIAL LITERACY: POWER OF ATTORNEY

*NEWFOUNDLAND AND
LABRADOR EDITION*



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POWER OF ATTORNEY

Power of Attorney is a legal document that gives another person the power, or right, to make decisions for you. The person you authorize to make decisions for you is called the **attorney**. The attorney should be someone you trust and does not need to be a lawyer. When you authorize someone to act as your attorney, you are referred to as the **donor** or **grantor**. This is because you are deciding to give or grant that power to another person. A person who you have named as an attorney has a legal duty to act in your best interest. If you are still legally competent to make your own decisions, your attorney has a legal duty to follow your directions. If you are not legally competent, your attorney must act in your best interest and make decisions that benefit you, not your attorney.

In Newfoundland and Labrador, there are two types of power of attorney that you can name with regard to your *finances*:

- **Power of Attorney** (with limited duration). This standard Power of Attorney automatically terminates when you are deemed no longer legally competent to make your own decisions.
- **Enduring Power of Attorney**. This Power of Attorney continues to exist until your death, regardless of whether you are legally competent to make your own decisions.
- **For either type of power of attorney, you can place limits on the kinds of actions your attorney can take on your behalf.** You do not need to give your attorney power over all your affairs. For example, you can give your attorney power only to use your chequing account to make deposits and withdrawals, and to pay your regular bills.

In Newfoundland and Labrador, the law is not clear as to whether a Power of Attorney created in another province is valid here. If you are concerned about the applicability of a Power of Attorney document in Newfoundland and Labrador, you should consult a lawyer for advice on your particular situation.

IMPORTANT INFORMATION ABOUT POWERS OF ATTORNEY

A **standard** power of attorney is only in effect as long as you are legally competent to make decisions for yourself. If you decide to give someone power of attorney over your legal affairs, you can decide that this power can automatically terminate when you are no longer able to make your own decisions. You may wish to designate someone else, or add additional people, as your attorney, in this case.

If you wish for someone to have the power of attorney after you are deemed not legally competent, you must give that person or those people an **enduring power of attorney**. This means that the power of attorney lasts **after** you have been deemed not legally competent to make your own decisions.

This is an important point: in Newfoundland and Labrador, you must specifically state that a person or people have enduring power of attorney over your affairs.

- You can give someone enduring power of attorney over your affairs by putting a provision into your power of attorney.
- This provision specifically states that a person or more than one person has enduring power of attorney. This person or these people can continue to use your accounts as they have done before you were deemed not legally competent to make your own decisions.
- A person who has been given an enduring power of attorney must still act in a way that is consistent with the direction they had received in the past about using the power of attorney donor's financial accounts. They must still act in your best interests, and they must still use the power of attorney as you would have wanted them to if you were still legally competent.

In either a standard or an enduring power of attorney, you can choose to limit the actions an attorney can take.

- If you only want your attorney to access some of your accounts, you can state this in your power of attorney document.

- If you only want your attorney to conduct certain kinds of transactions, you can state this in your power of attorney document.

These are your finances. You have the legal right to make power of attorney arrangements in ways that make you feel comfortable, secure, and supported.

WHO CAN ACT AS MY ATTORNEY?

In Newfoundland and Labrador, an attorney must

- be legally competent, and,
- 19 years of age or older.

Anyone can act as your attorney. Who you appoint as your attorney is your choice.

- You might choose a family member, or a close friend.
- Just because someone is a family member or close friend does not mean you must pick that person to be your attorney.
- You can appoint more than attorney.
- Any person you authorize as your attorney must act in your best interests.

A Power of Attorney does not need to be permanent. If you give someone Power of Attorney over your affairs—a Power of Attorney can be related to your health or finances—and that person does not act in your best interest, you can revoke the Power of Attorney that you have given them.

- If you give someone Power of Attorney and wish to change that decision, it is your right to change your mind. Power of Attorney can be changed or cancelled.
- You do not have to tell anyone that you are changing (limiting or cancelling) their Power of Attorney until after you have made that change. This includes the person you have named your attorney.
- If you are legally incapacitated, a person with an interest in your estate can apply to the court to change the Power of Attorney.

WHAT CAN AN ATTORNEY DO FOR ME?

Your attorney can conduct any of your personal financial business. For example, on your behalf, your attorney can:

- pay your bills,
- deposit and withdraw money from your bank account,
- write cheques,
- sell your property, or,
- sign contracts.

Many people find this a useful arrangement. If you cannot leave your home easily, or if you need someone to help you with your financial matters, your attorney can make sure that your financial business continues as usual. It is very important to choose a person you trust as your attorney, since this person will be able to use your accounts just as you would, as long as you don't limit what your attorney can or cannot do.

Remember: your attorney **must** respect your best interests. It is against the law for an attorney to use your account in ways that do not respect your best interests.

HOW CAN I MAKE A POWER OF ATTORNEY WORK FOR ME?

Tell your lawyer that you wish to limit the power of attorney that you are granting.

- Be as specific as possible.
- Tell your lawyer what kinds of accounts you want the attorney to have access to.
- Tell your lawyer what kinds of transactions you want the attorney to be able to conduct on your behalf.
- Tell your lawyer if you want a standard power of attorney, which lasts until you are no longer legally competent to make your own decisions, or an enduring power of attorney, which lasts until your death.

- Remember: you can revoke (end) or alter a Power of Attorney if you wish. A Power of Attorney is not a permanent document.
- If you are concerned that your attorney is not respecting the power that you have given him or her, you have the legal right to ask for an accounting of all funds that the attorney has used. The attorney must keep records of what they have done on your behalf, and you have a right to see them. Ask your lawyer or someone you trust if you wish to have the attorney make an accounting of your funds.

WHAT IS AN ATTORNEY NOT ALLOWED TO DO?

A Power of Attorney is a privilege, not a right. Nowhere in the law does it say that anyone has the right to be your attorney in financial matters.

You can set out the terms of your Power of Attorney in a way that makes you comfortable with letting someone make decisions for you or have access to your finances. Under the law, anyone who has been named an attorney must act in the best interests of the person who gave him or her that power. A power of attorney cannot:

- make a decision or act in a way that is not in your best interest.
- use your money for their own financial gain, at your expense.
- forge your signature to name themselves your attorney.
- make you sign any document that you do not want to.
- force you to leave your home, especially if you are still legally competent.

Under the law, the person you name as your attorney is supposed to follow your instructions and directions. Your attorney is only supposed to do as you say, and act in your interest.

If you are concerned with the way your attorney is acting, you should speak with someone you trust.

WHAT DO I DO IF SOMEONE IS ABUSING THE POWER OF ATTORNEY?

If someone is abusing their power of attorney, you can ask for help.

You do not have to tell anyone you are changing your power of attorney. You are entitled to change or terminate the Power of Attorney. If someone is abusing the Power of Attorney and not meeting their legal duty to you by not following your direction, that person could experience legal consequences.

- Abusing the Power of Attorney can result in termination of that power. You do not have to keep someone as your attorney, even if they are family or a close friend.
- Abusing the Power of Attorney might result in fraud charges.
- Abusing the Power of Attorney can also result in civil (non-criminal) financial liability.

You might want to tell the following people who or agencies that can help you if your attorney does not act in your interest.

- A trusted friend or family member who is not close to the person abusing the Power of Attorney.
- Your financial institution, like your bank or credit union. They can keep an eye on your accounts and provide important support for you.
- Your lawyer. Your lawyer can end an existing Power of Attorney, and put a new one in effect. Your lawyer can also help you make the attorney account for all the money he or she has withdrawn from your account or spent.
- Your local police force. They can connect you to community and legal resources to deal with the abuse of the Power of Attorney.
- Royal Newfoundland Constabulary: Northeast Avalon: 709-729-8000; Corner Brook: 709-637-4100; Labrador West: 709-944-7602; TTY-TDD: 1-800-363-4334.
- Seniors Resource Centre of Newfoundland and Labrador. They can refer you to supports and provide more information. Toll-free: 1-800-563-5599.
- Public Legal Information Association (PLIAN) of NL. They can refer you to supports and provide resources. Toll-free: 1-888-660-7788; Website: <http://publiclegalinfo.com/>

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