LIFE*SPIN

WILL AND POWER OF ATTORNEY FUNDAMENTALS:

Wills, Power of Attorney for Property and Powers of Attorney for Personal Care

Why make them?

How to make them?

What are the advantages of having them?

DISCLAIMER 

This will and power of attorney information kit has been prepared by two students at Western University's Faculty of Law under the supervision of a practising lawyer. The information in this information kit is **intended as general legal information only and does not constitute legal advice**.

We strongly recommend that readers of this information kit seek independent and competent advice from a lawyer, once they have reviewed the information contained in this information kit.

NOTE: Each Canadian province has its own laws for wills and powers of attorney. The information in this information kit reflects Ontario law, as of February 2021.

Ontario residents may obtain a **free 30-minute legal referral,** courtesy of the Law Society of Ontario. Please visit the following website for further information on the Law Society Referral Service:

https://lsrs.lso.ca/lsrs/welcome

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INTRODUCTION

According to a recent CBC article, **more than 50% of Canadians do not have a will**. Not having a will or a power of attorney in place can leave individuals in a **difficult situation when they die, or if they become incapacitated**.

If you die without a will, there is no "executor" to manage your estate and your estate will be divided according to the terms of statute law.

If you become incapacitated and have no power of attorney, there is no one to make financial or personal care decisions for you. Your family may have to go to court to have a guardian appointed. That is expensive and time-consuming.

LIFE*SPIN invited us to create this general information kit to help its clients be in a sounder position if something unexpected were to occur in their personal lives.

In the following pages, you will find important information regarding three legal documents: 1) your will, 2) your power of attorney for

property (“financial”) and 3) your power of attorney for personal care (“medical:”). The **first two sections** of each section of the information kit will outline **what each of these documents are** and **why they should be created**. This information kit will also outline how these documents can be made (with the assistance of a lawyer) and will provide additional information which we hope you will find helpful in thinking about your will and powers of attorney.

I) THE WILL

1. What Is A Will?

A will is a written document that a person (known as a "testator") uses to distribute what they own on, their death. A will only comes into effect once the will-maker has died. When someone makes a will and doesn't die until, say, twenty-five years later, that will is still valid. Generally, a will does not "expire" after so many years.

2. Why Make a Will?

There are two main reasons why you should make a will. Creating a will allows you to:

1) **Distribute your assets** (belongings and financial property) in **the way of your own choosing**

2) **Choose an executor**--- the person who is appointed to carry out, i.e., "execute", the terms of your will

Many people believe that, if they don't make a will, their assets will go to the government. This is not true!

Myth #1- If I Don't Make a Will My Money Will Go to the Government

If an individual does not make a will, there are two main consequences:

- 1) The **distribution of your assets is made by rules** set out in a law called the *Succession Law Reform Act*- https://www.ontario.ca/laws/statute/90s26)
- Here are three examples of the rules (which, generally, cannot be changed):
    - If you have a married spouse, but no children, everything that you own goes to your married spouse
    - If you have a married spouse and 1 child, the first $200,000 of assets go to your married spouse. What is left is divided half to your married spouse and half to your child
    - If you have no married spouse, and more than 1 child, everything is divided equally among the children

- 2) Even if you are “happy” with the predetermined rules, having a Will is **likely to reduce delays** in dealing with your assets, because there is no executor. Also, when you die without a will, there are additional expenses which are not payable when you have a will. For example, if you die without a will, and someone has to go to court to be appointed estate administrator, that person has to post an insurance company bond.

3. What are the Suggested Qualities of your Estate Trustee?

The advantage of creating a will is that you get to choose who your executor (also called an “estate trustee”) will be. Your estate trustee will be managing your property after you die. You will be trusting that they will carry out your will provisions. Because of this they should be someone you trust and someone you know is capable of handling what you own. and passing it on to your beneficiaries. You should also ensure that you are naming someone who will not have a conflict of interest in

dealing with your estate. For example, you would not appoint someone who says they have a legal claim against you.

In order to be your trustee, the person must be at least eighteen years of age, and must be of sound mind (meaning, generally, that they are mentally capable of making good decisions). The estate trustee cannot be someone who is bankrupt, or in prison.

You can name more than one person to be your executor. Where there are two or more executors, the executors have to act together. In such a case, it is important to appoint people who have a history of getting along with one another.

You can also name a single executor (the primary executor) and then an alternate (backup) executor. The backup would become the executor only if your primary executor is unable or unwilling to act for any reason (for example, death or disability). If you choose to have just one executor, it is a good idea to include an alternate, because this will

ensure there is a smooth transition if your primary executor can no longer look after your estate.

Before you make your will, you should ask both your first choice and your backup if they will take on this responsibility. If you do not ask them, they are under no legal obligation to act as your executor, and your beneficiaries then can choose your executor.

4. How Do You Make a Will That is Effective?

In order to make an effective will, we recommend the following considerations:

i) Your will must clearly express your intentions not merely express wishes (e.g., “to transfer my car to Walid” (clear) as opposed to “maybe Walid would like my car” (a wish))

- We recommend wording such as “I appoint”, “I authorize”, “I direct” and “my trustees shall”, because they demonstrate a clear direction to your executor

ii) Your will must outline a specific distribution of assets that you intend. If the will only outlines certain possible distributions, it will not be valid

iii) Your will must be intended to effectively represent your wishes. A will is not valid if…

- The will-maker does not have what is called "testamentary capacity" (an understanding of family relationships, an understanding of assets and debts, and the ability to clearly articulate wishes)
- The will was signed under undue influence (i.e., coercion) or fraud
- When there is a serious question as to whether the testator had knowledge of, and approved the contents of the will, and
- When the will has not been signed in compliance with the rules set out in the *Succession Law Reform Act* referred to above.

iv) Even though your assets may change after your will is created, the will is still effective at your death. When lawyers assist clients in

drawing a will, the lawyer will often take into consideration both present and future circumstances

Myth #2- I have to list all of my assets in my will

This is not true!

As mentioned above, the will covers whatever assets you may own at your death. If your will were to leave specific items to specific people, for example, a piece of jewellery or a painting, if the jewellery item or the painting is lost or stolen or if you give them away, it is probably a good idea to update your will --- through your lawyer.

5. How Do You Create a Valid Will?

In order for a will to be valid it must reflect your desires and wishes, not anyone else's, i.e., the will cannot be made as a result of someone coercing you.

A will must be in writing and it must be signed in order to be valid.

The Golden Rule for Signing Wills

A valid will must be signed by the will-maker ("testator") and two witnesses. The witnesses cannot be beneficiaries or married spouses of beneficiaries. Our Ontario wills law contains very detailed rules around the signing of wills.

In order to ensure the signing is done properly, and this is the responsibility of the lawyer you hire, it is best for the testator and witnesses to not leave the room until all the signing is done.

Your executor can be a witness as long as they are not a beneficiary or a married spouse of a beneficiary.

5.1 Is a Holographic (Hand-Written) Will Valid?

Ontario wills law permits you to make a "holograph" will. Holograph wills are considered valid without witnesses. However, the will must be

written **entirely** by your own hand. You cannot dictate your will and have someone else write it. Also, it cannot be typed. It must be written completely in your own handwriting, and then signed by you.

We do not recommend using a holographic will. This is because words used by you may seem to be nothing more than expressions of mere wishes, or the words may have a specific legal meaning that you do not intend. Additionally, assets that you own which, while clearly identifiable to you, might not be so clearly identifiable to the will's objective reader (e.g., you make a gift of "my bracelet" and you have several bracelets, one of which is very valuable).

5.2 Can a Will-Maker Who Cannot Read or Write Make a Will? Can A Foreign Language Speaker Make a Will?

A person who cannot read or write can create a valid will. At the time of signing, someone (usually the lawyer) will read the will to the will-maker, word for word. Then, instead of signing the will with a signature, the will-maker makes an "x" which constitutes the "signature" as required by the law.

A person who cannot read or write English can make a will in the language of their choosing. The will still has to be signed in compliance with Ontario law as discussed above. If the will has to be "probated" in the court, a certified translation of the will must be delivered to the court.

6. Can A Will Be Revoked (i.e., cancelled)?

A will can be revoked (i.e., cancelled) in two instances:

1) Revocation Document- the will-maker may always revoke a will at any point, by signing a revocation document. That document has to be signed in compliance with the detailed signing rules discussed above (pg.13)

2) A previously created or existing will is revoked or cancelled when the will-maker makes a new will.

Revocation by Marriage: In Ontario, when an individual gets married, their existing will is automatically revoked. This instance will require the

creation of a new will. If a new will is not made, then the estate will be dealt with as if the person died without a will.

7. Joint Interests

Many couples, married or unmarried, own assets (for example, bank accounts) that are owned "jointly". Joint assets are not included in a will. That is because they pass to the surviving joint owner by "right of survivorship", meaning that the surviving joint owner automatically acquires the share of the deceased person, simply by surviving.

To be clear, joint assets can be owned by people who are not a couple.

8. Life Insurance

If you have a life insurance policy, you can designate a specific individual to be the beneficiary of the policy when you die. You can sign this beneficiary designation form either through your life insurance agent or you can make the designation in your will.

9. RRSPs Under a Will

If you have an RRSP, you can designate a specific individual to be the beneficiary of the money in the RRSP when you die. You can sign this beneficiary designation form, either at the financial institution where you have your RRSP, or you can make the designation in your will – with your lawyer's assistance, because special wording is required in a will.

10. RDSPs Under a Will/Henson Trust

If one of your beneficiaries is receiving ODSP (Ontario Disability Support Program), or there is a potential they could receive ODSP in the future, then you should consider including a Henson Trust (also known as an Absolute Discretionary Trust) in your will.

The Henson Trust is designed to maintain the ODSP payments. In a Henson Trust, the money must be held by the trustee at their full discretion. This means that the beneficiary (the person receiving the ODSP) does not have any legal claim to the property, and so it will not be considered an asset that would impact the eligibility for ODSP.

Instead, it is the trustee who has sole decision-making authority over the trust and how to use it to help the beneficiary. This can include payments to the beneficiary's RRSP and RDSP, or to pay for equipment or services related to the beneficiary's disability. On the death of the ODSP recipient, the will often permits the trustee to pay for the beneficiary's funeral and burial expenses.

11. International Will

Where a will-maker owns property in a country that has signed on to an international treaty on wills, that person should have an "international will". Your lawyer is responsible to ensure that the rules to make a valid international will have been followed. These rules are set out in the *Succession Law Reform Act*, referred to above (pg. 7).

12. Is the Executor Entitled to Compensation?

Yes, an executor is entitled to compensation. The compensation is equal to, roughly, 5% of the value of the estate of the deceased individual. Where there is more than one executor, the 5% is split

among the executors as they agree. Each executor does not receive 5%.

Generally, executor compensation is taxable income.

II) Power of Attorney (POA) for Property ("Financial")

1. What is a POA for Property?

A power of attorney for property is a written signed document in which one person (called the "grantor" or the "donor"), gives to another person (called the "attorney" or "the grantee" or "the substitute decision-maker (SDM)"), legal authority to act on behalf of the grantor with respect to the grantor's "property". Although we generally associate "property" with land/real estate, in power of attorney law, "property" is not limited to land/real estate. "Property" includes financial assets, possessions, and land/real estate --- anything that has a tinge of money.

In Ontario, you must be at least eighteen years of age to make a valid POA for Property. Further, the attorney must be at least eighteen years of age.

NOTE: When a donor makes a POA for Property, that does not mean that the donor no longer has the right to manage their own financial

affairs. The POA for Property simply gives the attorney the right to manage the donor's financial affairs when the donor is incapacitated.

NOTE: In this document, when we use the word "attorney", we do not mean your lawyer. We mean the person whom you have named to make financial decisions on your behalf.

2. Why Make a POA for Property?

A power of attorney for property is generally made in contemplation of the possibility of future loss of physical or, more often mental, capacity, that may cause an individual to be unable to make decisions on their own.

If you become incapacitated, and do not have a POA for Property, then your family may have to hire a lawyer to have a guardian appointed by a judge. This can be an expensive and time-consuming process. Until the guardian is appointed, there is no one with authority. For example, if you become incapacitated and have no POA for Property, no one can go into your apartment, pay your bills, deal with Old Age Security,

Canada Pension or ODSP, because there is no one legally designated to speak for you. This is the value of a POA for Property.

There is no law that says that you must have a POA for Property. However, things will be much easier for your family if you have this legal document.

If you are admitted to a psychiatric facility, The Public Guardian and Trustee takes over all of your financial affairs. However, if you have a POA for Property that is unrestricted, the Public Guardian and Trustee must step aside. If you have a restricted POA for Property, someone (e.g., a family member) may be able to convince The Public Guardian and Trustee to step aside.

To re-iterate, in order to avoid the government having some or total control over the decisions made over your property, through the Public Guardian and Trustee, we strongly recommend that a Power of Attorney is made. This will also avoid the filing of a management plan which can be quite time-consuming.

3. Suggested Qualities of an Attorney for Property?

The qualities of an attorney for property are similar to those of an executor, as discussed above (pg. 8). The attorney should be someone you trust explicitly, and someone you know is capable of handling your financial affairs (has an understanding about financial matters) because the attorney will probably be handling your finances at a time that you are mentally incapacitated and cannot speak for yourself.

Before you make your POA for Property, you should ask both your first choice and your backup if they will take on this responsibility. If you do not ask them, they are under no legal obligation to act as your attorney, and your document becomes worthless.

4. When is a POA for Property Operative?

Unlike a will, which is effective only on death, your POA for Property generally becomes operative when the donor is still alive. A POA for Property is used by the attorney when you are alive but due to physical or cognitive imitations, not able to look after your financial affairs. Your

POA for Property can be useable either when it is signed, or upon your becoming incapacitated. This decision will be made as part of your consultation with your lawyer, who will normally review the pros and cons of each alternative.

5. Limitations on Attorney's Authority

There is one important limitation that applies to a POA for Property. Ontario law allows the attorney to do anything on the donor's behalf except make a will. The Ontario Court of Appeal has ruled that an attorney cannot change a designation on a life insurance policy. Currently, it is unclear if an attorney can change a beneficiary designation on an RRSP or a Tax-Free Savings Account, or if an attorney can make an account owned by the donor into a joint account.

Also, you can make a POA for Property that only covers certain assets, e.g., "my accounts at TD Bank". We do not recommend this because then you have no POA for Property over your other financial dealings (e.g., your Old Age Security, Canada Pension or ODSP).

6. What Constitutes Capacity to make a POA for Property?

A person is incapable of managing property see Ontario *Substitute Decisions Act)* if he or she is either:

- 1) not able to understand information that is relevant to making a decision in the management of his or her property; or
- 2) not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision

This wording is complex, and people may argue over whether or not a person is "incapacitated".

One benefit of you making a POA for Property is that you have the right to name who decides whether or not you are incapacitated. Your lawyer will discuss this with you.

If you do not indicate in your POA for Property who you want to determine incapacity, then medical specialists, or capacity assessors (who are appointed by the Ontario Public Guardian and Trustee's Office) are brought in to certify that a person is incapacitated.

7. How Do You Create a POA for Property?

The first step in making a POA for Property is to ensure that you understand the role that the attorney will play, and that you are comfortable with the attorney you propose to name.

Your POA for Property must be made in writing.

It does not require a prescribed form, which means that the document has no pre-determined structure.

Like a will, a POA for Property requires certain signatures to be valid. It must name someone as your attorney, and be signed and dated by you.

It must also be signed by two witnesses. These witnesses cannot be you or your spouse, or the attorney or the attorney's spouse. If there is a mistake and one of the above "ineligible witnesses" signs the document, the court may fix/remedy this under section 10.4 of the Substitute Decisions Act (https://www.ontario.ca/laws/statute/92s30).

Most importantly, the **Golden Rule** is recommended: once the signing process starts in front of the two witnesses, all parties must stay in the same room until everyone has signed.

*The attorney themselves does not have to sign the document, but it is a very good idea for you to make sure, before you sign the document, that the attorney named has agreed to be your “financial” attorney.

7.1 Can I Appoint More than 1 Attorney?

Yes.

If you appoint more than one attorney, these attorneys are presumed to be joint attorneys, unless you say otherwise in your document. When you appoint joint attorneys, this means that they must **both** sign off on matters. This does not present concerns for the POA for Property but may cause concerns for the POA for Medical Care discussed in the third section of this information kit.

8. What Are the Obligations/Duties of your Attorney for Property?

An Attorney for property must exercise their powers with honesty, integrity and in good faith. Their actions must always be made in your best interests.

9. Does your Attorney Receive Compensation?

Yes, an Attorney for Property may take annual compensation; the amount that an attorney can take is described in Regulation 26/95 of the *Substitutes Decision Act* and it is paid out of the donor's assets.

Very generally, the attorney is paid 3% of money received and 3% of money being paid out and is paid a further percentage (0.6% per year) of the donor's total assets.

10. Can a Power of Attorney for Property Be Revoked?

A POA for Property can be revoked (that is, "cancelled") at any time that the donor still possesses legal mental capacity.

If you were to become incapacitated, and your attorney had to take over your finances and you recovered, then you would have to tell the attorney that you are taking back control of your finances. If the attorney refused to comply, then you could revoke the power of attorney document.

Unlike with a will, marriage after you sign your POA for Property does not revoke the POA.

11. Can an attorney resign?

Yes.

Where the attorney does not want to look after the donor's financial affairs any further, they have to follow a specific process that is set out in the *Substitute Decisions Act*.

Because an attorney can die, or become disabled or resign, it is essential that you name a substitute ("backup") attorney in your POA document. If your first choice of attorney is unable to fulfill their role

for any reason, then the substitute will take over the duties of your first choice.

12. What Happens at The Termination of a Power of Attorney for Property?

A POA for Property will terminate or end for the following reasons:

1) The donor dies

2) The attorney, resigns dies, or becomes incapable of managing property, and there is no backup named in the POA document

3) The donor revokes the POA.

Once the donor dies, the attorney can no longer use the POA for Property. On your death, your attorney must transfer your assets to your executor(s) who will then handle those assets, based on the instructions outlined in your will.

III) The Power of Attorney for Personal Care ("Medical")

1. What is a POA for Personal Care?

A power of attorney for personal care is a written document in which one person, called the "donor", gives authority to another person, called the "attorney", to make decisions about the donor's personal care. Our power of attorney law does not define "personal care", but one section of the law refers to health care, nutrition, hygiene, clothing, as well as living arrangements, education, and social services to be provided to the donor, and so we generally think of "personal care" as including those listed items. Because the attorney is making these personal care decisions, the attorney will have access to personal information, including health information and records. Unlike that part of our power of attorney law dealing with the POA for property, a POA for personal care can be made by any individual at least sixteen years of age. Also, the attorney must be at least sixteen.

As was the case with the Power of Attorney for Property, when we use the word "attorney", we do not mean your lawyer. We mean the person whom you have appointed to make personal care decisions when you are incapacitated.

2. Why Make a POA for Personal Care?

Creating a POA for Personal Care allows you to name the person you want making personal care decisions for you after you become incapacitated and are unable to make these decisions yourself.

If you do not make a POA for Personal Care, difficult and potentially expensive complexities arise. If you are in a hospital and the issue relates to treatment, a law called the *Health Care and Consent* Act sets out a list of family members, with a fixed order of priority, who can make the decisions for you. For example, a spouse (including a common-law spouse, has priority over your children. Your children have equal priority, and they may disagree about your treatment. You may

not agree with the list in the *Health Care and Consent Act*, and that would be one reason to prepare a power of attorney for personal care.

If you are not in a hospital, and the list in the *Health Care Consent Act* does not apply, then there is nobody to make your personal care decisions. Your family will likely have to hire a lawyer (expensive) to have a judge appoint a guardian (this can be a lengthy process) to make your personal care decisions. Alternatively, the Public Guardian and Trustee may start making personal care decisions for you. Having a POA for Personal Care allows you to choose the person that you want to make decisions for you.

There is no law that says that you must have a POA for Personal Care. However, things will be much easier for your family if you have this legal document.

To re-iterate, in order to avoid the government having some or total control over the decisions made over your personal care, through the Public Guardian and Trustee, we strongly recommend that a Power of

Attorney is made. This will also avoid the filing of a management plan, which can be quite time-consuming.

3. Suggested Qualities of an Attorney for Personal Care?

Your POA for Personal Care deals with far more personal and intimate matters than a Will of POA for Property. As such, you should ensure that the individual you pick to be your attorney knows about your wishes and beliefs. This should be someone who is truly concerned with your personal well-being, and whom you feel comfortable with making important personal care decisions for you, such as whether you have complex surgery, whether you receive pain medication and how much, and whether life support systems are ended.

Your attorney for personal care does not have to be the same person as your POA for property. However, you can legally appoint the same person for each role.

Before you make your POA for Personal Care, you should ask both your first choice and your backup if they will take on this responsibility. If

you do not ask them, they are under no legal obligation to act as your attorney, and your document becomes worthless.

Myth – It is best to pick someone with healthcare experience to be my attorney

While this might be helpful experience to have, you should not choose someone who has healthcare experience over someone who knows your beliefs and desires well , and who promises to make decisions for you, when you are incapable, that are consistent with those beliefs and desires.

NOTE: Your Attorney cannot be someone paid to provide services for you (such as a landlord, social worker, or nurse), unless that person is also a spouse, partner or relative.

4. When is a POA for Personal Care Operative?

Similar to a POA for Property, your POA for Personal Care is operative only during your lifetime. Your POA can be used when you are

incapacitated. If you dispute that you are incapacitated, Ontario law provides a process to resolve this dispute.

5. What Constitutes Capacity to make a POA for Personal Care?

You will be deemed to be incapable of making personal care decisions if you cannot understand the information that is relevant to the particular personal care decision, and cannot appreciate the consequences of the decision. This is a very different capacity level than for a Power of Attorney for Property. Because of the different definitions of capacity, in many situations, people can often make their own personal care decisions well after they become incapable of making financial decisions.

6. How Do You Make a POA for Personal Care?

To make a POA for personal care, you must have the ability to understand whether the proposed attorney has a genuine concern for your welfare, and you must be able to appreciate that the attorney may need to make decisions for you.

The POA for Personal care must be made in writing. There is no prescribed form, meaning that the document does not have to follow a certain structure.

To be valid it must name someone as your attorney and be signed and dated by you.

Just like in the case of the POA for Property, the POA for Personal Care must also be signed by two witnesses. These witnesses cannot be you, or your spouse, or the attorney or the attorney's spouse.

The Ministry of the Attorney General has blank POA for Property and POA for Personal Care forms on their website (see pg.13 and pg.21).

https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.pdf

6.1 Can I Appoint More than One Attorney?

When you name more than one person as your POA for Personal Care, those persons must always act together. This can be problematic for the POA for Personal Care. Personal care decisions sometimes need to

be made immediately. If that is the case, waiting for both attorneys to be contacted and give their consent might be difficult, and might compromise your medical care. If you do wish to have multiple attorneys named, they should be named **jointly and severally**. This means that either attorney can make decisions without needing the consent of the other, which would prevent the risk of slowing down potentially time-sensitive decisions.

7. "Living Wills" / Advance directives

Advance directives can be written as a part of the POA for Personal Care document that you sign, or they can be in a separate document. These directives can include decisions such as: when you would want medical treatment to be stopped (taken off of life support); whether you would like to donate your organs for transplant or research; whether you want your attorney to think about medical assistance in dying. While they do not have to be a part of the POA of personal care, including them in this document will help ensure that your attorney

knows about these wishes, and has all the information they need in one place, so that they can fulfill your desires.

Advance directives can be changed after the fact, and do not require the same formality as Wills or POAs. Your attorney must follow the most recent directive on a particular issue. When writing advance directives, it is important to know the difference between using the word “shall” and the word “prefer”. If you state that your attorney “shall” do something, this means that they must take (or refrain from taking) that action. If you state that you would “prefer” your attorney to do something, this means that the attorney has discretion about whether to take (or refrain from taking) that action, based on the circumstances.

8. What Are the Duties of an Attorney for Personal Care?

The Attorney must carry out their duties and make decisions honestly and in good faith.

When making decisions, particularly decisions where you have not given any direction or guidance in advance, they should consider your values and beliefs, and whether the decision they are making is likely to improve your quality of life, or prevent your quality of life from deteriorating. They are required to consult with you when possible, to ensure that they are making decisions that reflect your wishes and desires. They are also required to foster a connection with your next of kin (or family), and consult with them from time to time.

The attorney must also keep records of the decisions they made on your behalf.

9. Does the Attorney Receive Compensation?

Yes. The *Substitute Decisions* Act does not specify how to calculate compensation for an attorney for personal care. A line of cases has established that the following factors are relevant: the amount of time spent by the attorney in dealing with personal care (different from

social visits with the donor); the complexity of issues that the attorney has dealt with.

As noted above, the Attorney is not paid for purely social visits to the grantor, however.

10. Can a Power of Attorney for Personal Care Be Revoked?

Yes. A POA for Personal Care can be terminated by the grantor, if they have the capacity to make the document.

Unlike with a Will, marriage does not revoke a POA for Personal Care.

11. What Happens If the Attorney wants to Resign?

An attorney for personal care can resign. The *Substitute Decisions Act* provides a process that must be followed. The best solution to avoid a vacuum if your attorney resigns is to name a substitute attorney in your POA document. The substitute will become your personal care attorney, if your first-choice of attorney is unable to fulfill their role for any reason. If this is the case, the substitute will assume the duties of the attorney from the point that they resign.

CONCLUSION

We hope that this document is helpful to you. We know that it is lengthy. However, our laws on wills and powers of attorney are complicated, and we have tried to set out a number of points about each document that we think are important.

Once again, we would like to emphasize the importance of obtaining legal advice when completing your will and powers of attorney. While we hope that we have provided you with helpful information. This information kit is not a substitute for legal advice from a lawyer. For further information about how to obtain a free 30-minute legal referral, please visit the following website: https://lsrs.lso.ca/lsrs/welcome