



**Lancaster, Brooks & Welch** LLP  
Niagara's Lawyers Since 1882

# Duties Under Powers of Attorney



## Accessibility and Convenience

**Lancaster, Brooks & Welch LLP** have offices in both St. Catharines and Welland which are conveniently located in the downtown core.

Regular office hours are Monday to Friday from 8:30am to 5:00pm.

We are happy to make appointments at other times to satisfy our clients' needs.

80 King St., Ste. 800, St. Catharines, ON  
905.641.1551

3 Cross St., Ste. 202, Welland, ON  
905.735.5684

**905.641.1551**  
[www.lbwlawyers.com](http://www.lbwlawyers.com)

## What is a Power of Attorney?

A Power of Attorney is a document which allows a capable person to designate someone who can make decisions relating to the person's assets, debts and if the person who is granting the authority is unable to do so. There are two types of Powers of Attorney: Powers of Attorney for Property (financials) and Powers of Attorney for Personal (health & safety)

## Who may be named as an Attorney for Property?

A person may name anyone over 18 years as an attorney for property. More than one person may share the responsibility. Multiple attorneys may be named jointly or as substitutes to each other in the event that the first named is unable or unwilling to act.

## What role do I serve as an Attorney for Property?

Although a POA for Property can take effect immediately on signing, most people intend it to be used only if they become mentally or physically incapable of dealing with their own assets and debts. This situation makes them vulnerable so your role is to protect their welfare. You must act diligently, with honesty and sensitivity. When you control an incapable person's income and assets as an attorney for property, it does not mean you assume ownership of those assets or become personally liable for the person's financial obligations, but you are responsible for managing them in the best way possible. Your duties terminate on the death of the person.

## As an Attorney for Property, what authority do I have?

You may be permitted to make decisions related to the person's property that they would have been able to make themselves, except make a will. You may be allowed to open and close bank accounts, deal with investments, collect debts, pay bills and

maintain or sell a house or vehicle. The Power of Attorney document may limit the authority you have. It could specify that you cannot dispose of certain assets during the person's lifetime or place express conditions on how you manage the person's property. You are entitled to receive, from any person or business, information about property that belongs to the incapable person. Banks must provide you with details of accounts, safety deposit boxes and outstanding loans. You are entitled to see the person's will and should obtain it from their lawyer.

## What are my legal responsibilities as an Attorney?

- To keep the incapable person's financial accounts and transactions completely separate from your own and never borrow or use his or her money for yourself, your family or friends.
- To consider the personal comfort or wellbeing of the person in determining whether any financial decision or transaction is for their benefit.
- To the greatest extent possible, you must manage the property in a way that accommodates the decisions made about the person's personal care.
- To inform the person of all of your powers and duties, to the extent that they are able to understand.



- To encourage the person to participate in your decisions about the property.
- To discuss the financial decisions and transactions you make with family members and friends who are in regular contact with the incapable person.
- To take reasonable efforts to determine whether the person has a Will, and what it says. If the Will includes a gift of property, you must retain that property so it may be passed on to the beneficiary named.

### **Will I be compensated for being an Attorney?**

You are entitled to payment at a rate set by the Ontario government, unless the Power of Attorney for Property specifies otherwise. The rates permitted are 3% on monies received and paid out and 3/5 of 1% as a management fee on the average annual value of the assets. An Attorney for Property who receives compensation is required by law to exercise the same degree of care, diligence and skill as a person in the business of managing property. Compensation is usually claimed when the accounts of the incapable person's estate are submitted for approval to a judge.



### **Which Records and Accounts must I maintain?**

Keep accounts of all transactions involving the property. You may be required to submit them to the court for inspection. A court may order you to provide accounts if requested by the Office of the Public Guardian and Trustee, by the dependants or heirs of the incapable person, by a creditor, or by the named attorney for Personal Care.



### **Estate Law Group**

H. E. Thorsteinson, Q.C.  
 Gary L. Black  
 Barry R. McNaughton  
 David A. Thomas  
 Robert W. P. Welch  
 Michael A. Mann  
 Yaroslav O. Diduch  
 Maria G. Lucarelli  
 R. Bruce Smith  
 Robert W. Galloway



### **The Records that you keep must include:**

- A list of all of the incapable person's assets from the date you first make transactions on their behalf
- A list of all assets acquired and disposed of on behalf of the person
- A list of all money that you pay out or receive on behalf of the person, including all details associated with the transaction
- A list of all investments made on behalf of the person
- A list of all of the person's liabilities (debts)
- A list of all liabilities you have paid off or created on behalf of the person
- Particulars of all compensation you have taken. You should keep copies of invoices and bills paid, plus cancelled cheques.

### **What if I have questions about Proper Management?**

Consult a lawyer if you are uncertain about what steps you should take as an attorney for property. If necessary, you can apply to the Ontario Superior Court for directions on how to resolve an issue.

### **Power of Attorney for Personal Care**

A person may name anyone who is at least 16 years old as his or her attorney for personal care as long as the attorney is not someone providing that person with health care or with residential, social, training or support services for pay. More than one person may share the responsibility as attorney, or one person may be named and another as substitute, in the event that the first-named attorney cannot or will not act when called upon to do so.

### **What can an Attorney for Personal Care do?**

A POA for Personal Care does not take legal effect until the person who made the document is deemed to be incompetent. You may be given broad-sweeping authority or limited to certain areas of personal care. Among other things, you can express wishes as to acceptance of medical treatment on the person's behalf. Strong feelings concerning life support systems may also be addressed in the document.

### **What are my responsibilities as an attorney for personal care?**

These are your duties as an attorney for personal care:

- To act diligently and in good faith
- As far as possible, to foster the person's independence

- To choose the least restrictive and intrusive course of action that is available and appropriate
- To explain your powers and duties to the incapable person
- To encourage the person to participate, to the best of their ability, in personal care decisions
- To attempt to maintain regular personal contact between the incapable person and supportive family members and friends
- To consult from time to time with family and friends who provide personal care for the person.

At Lancaster Brooks and Welch, we recognize that acting as an attorney can be a difficult and confusing task. Any of the lawyers in our estates department are happy to answer questions.

*The information provided in this brochure is designed to provide topical information of a general nature only. You may wish to discuss any specific matter with your lawyer and you should feel free to do so at any time. This material is provided for information purposes only, not as legal advice, and is not intended to be exhaustive of your rights under the relevant legislation.*

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