

Important

Some of the information in this publication is out of date. We are working on updates. Please contact us if you have questions.

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Powers of Attorney



**Community Legal
Information**
Empowerment Through Knowledge

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Introduction

This guide explains what a power of attorney is and how it can be used.

About Us

Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

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The information in this guide is not legal advice, and it does not replace guidance from a lawyer.

What is a power of attorney?

A **power of attorney** is a legal document that gives another person the power to look after your financial and legal affairs. A power of attorney can be useful if:

- You can't look after your financial and legal affairs yourself.
- If you want another person to look after your financial and legal affairs for you.

The person you give the power to is called your **attorney**.

Powers of attorney are governed by the *Powers of Attorney Act*. To read this *Act*, go to:

<https://www.princeedwardisland.ca/sites/default/files/legislation/P-16-Powers%20Of%20Attorney%20Act.pdf>

A power of attorney does not give a person authority to make decisions about your health care or personal care. A power of attorney does not give a person authority to look after your financial or legal affairs after you die.

Who can I name in my power of attorney?

Your attorney can be:

- Your spouse or partner
- A friend or family member
- A lawyer
- A trust company
- An accountant

Choose someone you trust, who knows you well, who knows what you want, and who has the skills to perform the tasks.

You can name more than one person. They can act together, or as alternates.

The person (s) you choose must:

- Be 18 years or older.
- Be mentally competent.*
- Understand what it means to have power of attorney.

***Competent** means able to understand financial or legal matters and make informed legal or financial decisions.

Incompetent means unable to understand financial or legal matters and make informed legal or financial decisions.



How do I give someone power of attorney?

A power of attorney is a contract. You must be competent to enter into a contract. You must understand what it means to give someone power of attorney.

A power of attorney must be in writing. You must sign it in front of a **witness**. The witness must be 18 years or older and competent.

The power of attorney starts as soon as it is signed, unless it includes other instructions about when it will start. For example, your power of attorney may start:

- On a specific date.
- When you are out of the country.
- If you become incompetent.



Do It Yourself Power of Attorney Kit

Community Legal Information sells a kit to make your own power of attorney. The kit includes forms for making (and cancelling) your power of attorney. These forms are only valid in PEI. The kit costs \$30. Check with your bank to make sure that they will accept the kit before you purchase one.

Buy the kit on our website: www.legalinfopei.ca

For more information, call 902-892-0853 or 1-800-240-9798, or email info@legalinfopei.ca.

What exactly will my attorney be able to do?

The powers you give to your attorney can be as broad or as narrow as you like. What your attorney can do depends on the kind of power you give them and the limits you put on it.

There are three types of power of attorney:

- Specific power
- General power
- Enduring power

You can give a **specific power of attorney** for a specific task. It ends when the task is done. For example, if you give someone specific power of attorney to sell land for you, the power of attorney ends when the sale is done. A specific power of attorney also ends if you become incompetent or bankrupt or you die.

A **general power of attorney** allows your attorney to make decisions about your property and finances. It ends on the date you set or if you become incompetent. You can include an enduring clause, which means it will continue even if you become incompetent.

An **enduring power of attorney** starts if you become incompetent.

Deciding if you are competent is a medical decision. A doctor assesses you. The doctor writes a **certificate of incompetence** if they find you are incompetent. If you think they are wrong, you can ask to be assessed by another doctor.

An enduring power of attorney is usually kept in a law office. If you are assessed and found to be incompetent, the doctor notifies the lawyer. Then, the lawyer activates the power of attorney. You can also keep your power of attorney in another safe place.

Do I need a lawyer to make a power of attorney?

No. But, it's always a good idea to check with a lawyer to make sure your power of attorney will allow the attorney to do what you want them to do on your behalf.

What about banks' power of attorney forms?

Banks have their own power of attorney forms, but these forms cover only some of your dealings with that particular bank. They often cover specific accounts and specific activities within those accounts. Be sure to ask questions to make sure you are getting what you need from your bank(s).

What can I do to prevent misuse of power of attorney?

To protect yourself:

- Write in the power of attorney that your attorney must give you an accounting. An **accounting** is a report of all financial dealings made by your attorney. Write how often you want your attorney to give you an accounting. There is no process for your attorney to report on your financial affairs unless you write it into your power of attorney.
- Write in the power of attorney that if you become incompetent, your attorney must give an accounting to another person you trust. Write how often you want your attorney to give them an accounting.
- Limit the power you give to your attorney. For example, make a list of things that your attorney can't do with your money. Include this list in your power of attorney.
- Consider naming two people to be your attorney. This way each person is monitored by the other.
- Read your bank statements and your cancelled cheques carefully. If your attorney has the power to manage your bank accounts, the bank does not have to tell you when withdrawals are made. Stay informed about your finances.





If your attorney is abusing their power:

- Cancel the power of attorney. You can cancel the power of attorney at any time, as long as you are competent. You must give notice to your attorney that you are cancelling the power of attorney. This notice must be in writing, signed, and dated. If your attorney is misusing the document, cancel it. Give written notice to the organizations that have been dealing with your attorney that you cancelled the power of attorney. This notice must be in writing, signed, and dated.
- Get legal advice immediately. You may be able to sue your attorney to recover the money or property. Fraudulent misuse of power of attorney is a criminal offence and charges may be laid.

If you are acting as an attorney:

- Keep records of everything you do for the person who named you as their attorney. This will be useful if there are questions later about how you have managed things.



If you think someone's power of attorney is being abused, you can call the police. The police can lay charges if they find evidence of theft or fraud.

Can I cancel my power of attorney?

If you are competent, you can **revoke** (cancel) your power of attorney. You must give written notice to your attorney that you are cancelling the power of attorney. This notice must be signed and dated.

Give written notice to any organizations that have been dealing with your attorney that the power of attorney is cancelled. This notice must be signed and dated.

Can my attorney decide to no longer act on my behalf?

Your attorney can give you notice in writing if they don't want to continue. If you named an alternate, they become your attorney. If you didn't name an alternate, your power of attorney will no longer be in effect.

Your attorney can't give their responsibility to another person. If your attorney decides to end your agreement, write to the organizations that have been dealing with your attorney that your power of attorney has ended.

Are there any other ways a power of attorney can end?

Yes. Other ways that a power of attorney can end are:

- If you or your attorney dies.
- If you become bankrupt.

A specific power of attorney ends when the task is done or if you become incompetent.

A general power of attorney ends on a date you state in the document. If there is no enduring clause, a general power of attorney ends if you become incompetent.

What if I am declared incompetent and don't have an enduring power of attorney?

In this situation, family member(s) or friend(s) may apply to the Supreme Court to get permission to make financial decisions for you. The Supreme Court may name them as your committee. A **committee** is the person(s) appointed by the Supreme Court to make financial decisions for you. A committee must provide regular accounting to the court.

Do I have to pay my attorney?

Your attorney is usually paid for any out-of-pocket expenses.

You don't have to pay your attorney if they agree to act on your behalf without being paid. Otherwise, you may pay an amount that you agree on. Options include paying your attorney:

- By the hour.
- A small percentage of the money they are paying or receiving on your behalf.
- A small percentage of the value of the property they are managing for you.

Make sure your arrangement is written in your power of attorney.





Who is the Public Trustee and Public Guardian?

Sometimes a person is incompetent with no enduring power of attorney, but no one applies to be their committee.

The Public Trustee and Public Guardian is a person appointed by the Province to be a legal substitute decision maker for vulnerable adults if there is no other appropriate option.

The Public Trustee becomes someone's committee if the court orders it during a court application. The Public Trustee is automatically someone's committee if:

- Two doctors sign certificates of incompetence, and
- The person doesn't have an enduring power of attorney, and
- No trusted friend or family member applies to the Court and is appointed the person's committee.

The Public Guardian may apply to the court to become a person's guardian if:

- Two doctors sign certificates of incompetence, and
- There is no trusted friend or family member for the court to appoint to act as the person's guardian, and
- The Public Guardian determines the person needs a Guardian.

For more information, call the Office of the Public Trustee, Official Guardian, and Public Guardian at **902-368-6281**.

As of November 1, 2025 some information in this guide is incorrect.

What is the difference between an attorney, a proxy and next of kin?

An attorney is a person who looks after your financial and legal affairs.

A **proxy** is a person who makes decisions about your health care when you can't make or communicate those decisions. You name a proxy in a health care directive. A **health care directive** is a document where you write down your wishes about medical treatment in case you are unable to make decisions or communicate them at a future time.

In Prince Edward Island, your attorney can't make decisions about your health or medical care. But you can name the same person as your attorney and your proxy if you like.

If you have questions about health care directives, contact Health PEI at **902-368-6130**. Health care directive forms are available online at **www.gov.pe.ca/forms/pdf/2797.pdf**.

Next of kin is the person(s) most closely related to you. Being next of kin does not give a person the right to make decisions for you. You can name your next of kin as your proxy and/or attorney if you like.

Glossary

Accounting: A report of all financial dealings made by your attorney.

Attorney: A person named in a power of attorney document to look after your financial and legal business.

Certificate of incompetence: A certificate a doctor writes when they decide you are incompetent.

Committee: The person or people appointed by the Supreme Court to make financial decisions for you if you are declared mentally incompetent and have no enduring power of attorney.

Competent: Able to understand financial or legal matters and make informed legal or financial decisions.

Enduring power of attorney: A power of attorney that is written so that it remains in effect after a declaration of mental incompetence.

General power of attorney: A power of attorney that allows your attorney to make decisions about your property and finances.

Health care directive: A document where you write down your wishes about medical treatment in case you are unable to make decisions or to communicate them at a future time.

Incompetent: Unable to understand financial or legal matters and make informed legal or financial decisions.

Next of Kin: The person(s) most closely related to you.

Proxy: A person who makes decisions about your health care when you can't make or communicate those decisions yourself.

Revoke: To cancel.

Specific power of attorney: A power of attorney for a specific task.

Support Services

Community Legal Information

We provide presentations on legal topics, free publications, and free confidential legal information. We also host the Lawyer Referral Service, which provides a short consultation with a lawyer for a modest fee.

- 1-800-240-9798 or 902-892-0853
- info@legalinfopei.ca
- legalinfopei.ca

Adult Protection

If you suspect that a vulnerable adult is being neglected or abused, report your concern to Adult Protection.

- Souris: 902-687-7096
- Montague: 902-838-0786
- Charlottetown: 902-368-4790
- Summerside: 902-888-8440
- O'Leary: 902-859-8730

Office of the Public Trustee and Guardian

A provincial government office that can be a substitute decision-maker if there is no other option.

- 902-368-6281



More Resources

Community Legal Information

Community Legal Information offers the following publications:

- Wills
- Powers of Attorney
- Health Care Decisions
- Preventing Abuse and Neglect of Older Adults

We also have publications about other legal topics. All publications are free and can be found at www.legalinfopei.ca or they can be ordered by calling CLI at **902-892-0853** or **1-800-240-9798**.



Community Legal Information is a registered charity that receives funding from Justice Canada, the Law Foundation of PEI, the Law Society of PEI, the PEI Department of Justice and Public Safety, and other sources. Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

For more information on other legal topics, visit www.legalinfopei.ca, email us at info@legalinfopei.ca, or call us at **902-892-0853** or **1-800-240-9798**. You can also find us on social media.

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Charitable registration number: 118870757RR0001

ISBN: 978-1-897436-28-8

Published 2010. Revised May 2021

This publication was published in 2010 with the support of Employment and Social Development Canada (ESDC) through the New Horizons for Seniors Program. The views expressed do not necessarily represent the official policy of ESDC. This publication was revised and republished in 2021 with the support of Justice Canada.

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