

Your Duties as Power of Attorney

You may have been appointed under a Power of Attorney. This may help answer some of your questions.

Q. What is a Power of Attorney?

- A.** A Power of Attorney is a written document by which an individual (the grantor) appoints someone (the Attorney) to act on their behalf concerning financial and/or personal care matters.

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Q. What are the common misunderstandings about Attorney appointments?

- A.** Grantors are sometimes not aware of the extensive duties involved for the Attorney. On the other hand, Attorneys can be surprised by the extent of what they must undertake. In some cases, they have accepted not anticipating that the Power would ever be activated.

Q. When is an Attorney appointment made?

- A.** Most often an Attorney is appointed as part of the estate planning and Will preparation process.

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Q. What is the difference between a Power of Attorney for Property and Power of Attorney for Personal Care?

- A.** There are two separate documents reflecting different responsibilities:
- A Power of Attorney for Property allows your Attorney to deal with all financial matters concerning your assets.
 - A Power of Attorney for Personal Care allows your Attorney to deal with all your related health care issues including treatment decisions and long-term care residence placements.
- The Attorneys may or may not be the same individual depending on your needs and their abilities.

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Q. When does a Power of Attorney become effective?

- A.** A Power of Attorney for Property is valid upon execution unless otherwise stated in the document. Since Powers of Attorney are granted as a precautionary step, few people want them activated immediately. The documents should be held by a trustworthy person or trust company (if they are named as the Attorney) and you must give explicit instructions on when the named Attorney can commence to act under its authority.

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Q. What duties does the Attorney undertake?

- A. The Attorney must always act diligently and in good faith for the person's benefit. Depending on the terms set out in the Power of Attorney documents, the Attorney can act when it would be to the benefit of the grantor or there can be a restriction that the Power is only valid should the grantor become incompetent.

An example of the responsibilities and duties involved in being an Attorney includes:

- Consulting from time to time with supportive family members and friends
- Keeping accounts of all transactions involving the property
- Determining whether the person has a Will and if so what the contents are
- Making expenditures from the person's property that are necessary for their support, education and care and for that of any legal dependants
- Managing the person's financial assets, investments, real estate, bank accounts etc.

Q. What damages is the Attorney liable for?

- A. An Attorney may be liable for damages resulting from a breach of any of their duties. This means that if an Attorney fails to properly discharge any of their obligations, including the duty to maintain a particular standard of care, they may be required to compensate the grantor or perhaps even the beneficiaries of the grantor's estate, out of their own pockets.

Q. Can I refuse an appointment as Attorney?

- A. Yes, you are not obligated to take on this responsibility and you will want to consider carefully about your availability and expertise before accepting.

Q. What guidance can a professional give me if I have been appointed an Attorney?

- A. A professional can work with you to ensure that the grantor's investments are managed with the degree of care, skill and diligence required. They can:
- Assist you with customized asset allocation appropriate to the circumstances
 - Work with you to develop a viable investment policy statement
 - Keep accounts of all transactions

At Scotia Private Client Group, the estate and trust specialists at Scotiatrust have the experience and expertise to assist you in all aspects of estate planning and administration including appointing Powers of Attorney.

The information in this document is not intended to replace the advice of a lawyer or accountant and should not be relied upon as such.