



UNDERSTANDING PERSONAL DIRECTIVES AND ENDURING POWER OF ATTORNEY

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Planning for future possibilities can be difficult. While the future is unknown and ever changing, we can take steps to ensure we have some control over our own futures. Personal directives and enduring power of attorney forms are a part of this. Both of these forms give us a chance to outline our needs and wants for ourselves should we one day lose the capacity to make decisions temporarily or ongoing. It can be intimidating or even scary to think about the future, or you may think the future is far off and these documents are just for people already losing capacity. These documents are important for everyone of any demographic. Both are documents that can be updated and changed as your needs and wants change over time. Putting these together does not mean they take effect immediately and only come into effect when necessary. This article hopes to take some of the fear and unknown out of putting together both personal directives and enduring power of attorney forms.

Personal Directives

Let's start off with personal directives. A personal directive is a legal document that allows you to name the individual(s) (called your agent) you trust to make decisions on your behalf should you lose capacity. In this you will list the areas in which they have decision-making authority (e.g., health care, residential issues). You can include instructions that you want followed for nonfinancial decisions (for financial decisions see Enduring Power of Attorney) (e.g., refuse blood products, life support), as long as it does not include anything illegal or revolve around financial decisions. Your instructions can be about any or all personal

matters that are not financial, such as: medical treatments you would or would not want, where you would like to live, who you would like to live with, who will care for your children (if they are minors), choices about other personal activities for example recreation, education, any other personal and legal decisions. Some decisions for example a do not resuscitate order or organ donation require additional paperwork to be filed.

Personal Directives can be short or long term. For example, if you are in an accident and health decisions need to be made for a few days or long term for

example in the case of dementia. If you want to choose who your decision maker is, write a personal directive and name an agent. Otherwise, under the Adult Guardianship and Trusteeship Act, a health care provider may select the nearest relative to make decisions for a person who is assessed as being incapable of providing informed consent for health care or temporary residential placement at that time.

To be considered a legal document, the requirements are that your personal directive must be in writing (by hand, typed or digital form), dated, and signed by you in the presence of a witness. The following persons cannot witness the signing of a personal directive. Any person you have selected to make decisions on your behalf – called your “agent”, the spouse or partner of your agent, your spouse or partner, and the person who signs the directive on your behalf. If you are physically unable to sign the directive, another person must sign on your behalf in the presence of a witness and in your presence.

Although it is not a legal requirement to do so, it is a very good idea to give a copy of the directive to your agent, physician and to other service providers with whom you are involved (e.g., the director of the nursing home where you live). This ensures these individuals are aware of your directive and agent.

Enduring Power of Attorney

Enduring power of attorney is similar to a personal directive, however instead of covering health and residential decisions it covers financial decisions while you are alive. Generally enacted in the event you lose or have diminished capacity to make decisions. An enduring power of attorney is a legal document that you make to give another person (referred to as attorney) the authority to make financial decisions on your behalf. The document is written when you are capable of making your own decisions and states when the person will have authority. An enduring power of attorney can start either immediately and continue if you lose capacity or start when you lose capacity. If you lose your capacity and do not have an enduring power of attorney one of your family members or friends might have to go to court to become your trustee. This can take a lot of time and can be a costly process.

There are no standard forms for creating an enduring power of attorney. While having a lawyer help create your enduring power of attorney is not mandatory it is safest way to make an enduring power of attorney. This is to make sure you have protected all your financial interests and that your enduring power of attorney is legal.

Your enduring power of attorney lasts until one of the following occurs you pass away, you revoke or cancel it, court order reflects it is no longer valid, a court grants a Trusteeship order, your attorney dies, quits or an order of Trusteeship is granted over that person where there is no alternate attorney.

Once your enduring power of attorney is enacted your attorney deals with your day-to-day finances. They will have the power to prepare and submit tax documents, pay for medical care and support, use your assets to pay maintenance or spousal and child support, hire people to help you, deal with business interests and investments and other relevant financial day-to-day matters. Your attorney cannot buy or sell your home or any other real estate property belonging to you, (unless you specifically give them this power), cannot change or make a new will for you, cannot make, or change your enduring power of attorney, and cannot change beneficiaries on investments, RRSP plans, pensions or life insurance policies.

Just like personal directives it is a good idea to make sure you give a copy of the enduring power of attorney to your attorney, physician and to other service providers with whom you are involved (e.g., your lawyer, the director of the nursing home where you live).

In the event you wish to revoke or change your enduring power of attorney the steps to take will depend on your enduring power of attorney and capacity at that time. If you have capacity, you can revoke your enduring power of attorney at any point and for any reason. When you wish to revoke or change your enduring power of attorney immediately inform your attorney they are no longer permitted to act as your attorney. You then need to inform other people that you have involvements with like your bank, accountants, and lawyers.

If you do not have capacity, any party, or any interested person can apply to the courts for a full accounting of all dealings by your Attorney. Once the court is satisfied an order for action or adjustment will be granted. From there adjustments will be made in accordance with the courts ruling. In the event a new attorney is needed, and you do not have capacity a trusteeship will need to be put in place. The courts cannot name a new attorney for you. The judge may suggest a proceeding for the application for trusteeship. An interim order for trusteeship can be granted at that time until an ongoing trusteeship can be put in place.

These two aspects of advance care planning aim to ensure you are able to make the best decisions for yourself in the event you are no longer able to advocate and/or speak for yourself.