

Powers of Attorney Act

CHAPTER 352 OF THE REVISED STATUTES, 1989

as amended by

2010, c. 70; 2022, c. 23



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CHAPTER 352 OF THE REVISED STATUTES, 1989
amended 2010, c. 70; 2022, c. 23

**An Act Respecting
Powers of Attorney**

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Short title

1 This Act may be cited as the *Powers of Attorney Act*. R.S., c. 352, s. 1.

Interpretation

1A In this Act,

(a) “attorney” means a person who is given authority under a power of attorney to act on behalf of another person in relation to matters of property and finances;

(b) “common-law partner” of a person means another person who has cohabited with the person in a conjugal relationship for a period of at least one year;

(c) “Court” means the Supreme Court of Nova Scotia;

(d) “donor” means a person who gives authority under a power of attorney to another person to act on the person’s behalf in relation to matters of property and finances;

(e) “enduring power of attorney” means a power of attorney that continues to be effective even though the donor has become incapacitated;

(f) “immediate family member” means a spouse, registered domestic partner, common-law partner, adult child, adult sibling or parent;

(g) “interested person” includes

(i) the donor’s spouse, registered domestic partner or common-law partner,

(ii) an adult child of the donor,

(iii) an adult grandchild of the donor,

(iv) an adult great-grandchild of the donor,

(v) a parent of the donor,

(vi) an adult sibling of the donor,

(vii) an adult niece or nephew of the donor,

(viii) the Public Trustee,

(ix) an attorney or a monitor or any other person listed in the power of attorney,

(x) the donor’s delegate in the donor’s personal directive or equivalent document,

(xi) a representative of a care home where the donor is residing, and

(xii) following the donor’s death, a personal representative of the donor’s estate;

(h) “Minister” means the Minister of Justice;

(i) “power of attorney” means a legal document by which a donor gives authority to an attorney to act on the donor’s behalf in relation to matters of property and finances and includes an enduring power of attorney;

(j) “support” has the same meaning as in the *Adult Capacity and Decision-making Act*. 2022, c. 23, s. 1.

Application of Act

2 This Act applies to a power of attorney to the extent that the power of attorney authorizes the management of the estate of the donor. R.S., c. 352, s. 2.

Capacity

2A (1) Subject to subsection (2), a person is presumed to be capable of making a power of attorney.

(2) A person is incapable of making a power of attorney if the person is incapable of understanding and appreciating the nature and effects of granting a power of attorney, including

- (a) the type of property the person has and its approximate value;
- (b) the legal obligations the person owes to the person's dependants;
- (c) that the person's attorney will be able to do on the person's behalf anything in respect of the person's property and financial affairs that the person may lawfully do by an agent, subject to the conditions and restrictions set out in the power of attorney;
- (d) that the person's property and finances, unless the attorney manages them prudently, may decline in value;
- (e) the possibility that the attorney could misuse the authority given to the attorney;
- (f) that the person may, if capable, revoke the power of attorney; and
- (g) that the person may not, if incapable, revoke the power of attorney.

(3) A person is not incapable of making decisions regarding property and financial affairs by reason only that the person requires support or assistance to understand information relevant to the decision or appreciate the reasonably foreseeable consequences.

(4) A capable adult may do anything that the adult has authorized an attorney to do, regardless of whether the power of attorney is in effect.

(5) Subject to Section 5 and the power of attorney, the attorney may act within the attorney's authority despite the objections of the donor at the time of the act, if the donor is incapable when making those objections. 2022, c. 23, s. 2.

Decisions on behalf of incapable donor

2B (1) When making a decision on behalf of a donor who lacks capacity to make the decision, the attorney shall consult with the donor, if it is reasonable to do so, and

- (a) make the decision in accordance with any relevant instructions given by the donor when the donor had capacity;
- (b) in the absence of any instructions given when the donor had capacity, make the decision in accordance with the current wishes of the donor, if the wishes are reasonable;
- (c) where the wishes of the donor cannot be determined or are unreasonable, make the decision that the attorney believes the donor would make if the donor had the capacity to make the decision, taking into consideration the values and beliefs of the donor; or
- (d) where the attorney is unable to determine what decision the donor would make, make the decision that the attorney believes to be in the best interests of the donor.

(2) For the purpose of clause (1)(a), where a donor has given instructions that are inconsistent with previous instructions, the attorney shall make the decision in accordance with the most recent instructions. 2022, c. 23, s. 2.

Validity

3

- (1) A power of attorney is valid if
- (a) the donor has capacity;
 - (b) it is
 - (i) in writing and signed by the donor or, in the circumstances described in subsection (2), by another person, and
 - (ii) dated;
 - (c) the donor is of the age of majority; and
 - (d) it is witnessed and signed by two people of the age of majority, who are both present at the time the donor signs the document and who are not the attorney or the spouse, registered domestic partner, common-law partner or a child of the attorney.

the donor if

- (2) A power of attorney may be signed by a person on behalf of
- (a) the donor is unable to sign the power of attorney;
 - (b) the person signs the power of attorney at the direction and in the presence of the donor; and
 - (c) the person is the age of majority and not the attorney or the spouse, registered domestic partner, common-law partner or child of the attorney. 2022, c. 23, s. 3.

Exclusion

4

A power of attorney may include a provision expressly excluding the operation of subsection (2) of Section 59 of the *Hospitals Act* and in such case, where the attorney wishes to act, the attorney and not the Public Trustee shall conduct the administration pursuant to Section 59 of the *Hospitals Act*. R.S., c. 352, s. 4; 2022, c. 23, s. 4.

Duties of Attorney

5

(1) An attorney is bound by a duty of loyalty that includes, but is not limited to, a duty to

- (a) act according to the donor's directions;
- (b) act in the donor's best interests;
- (c) act in good faith;
- (d) avoid making secret profits;
- (e) avoid conflicts of interest; and
- (f) refrain from acting for the attorney's own benefit or for the benefit of third parties without the informed consent of the donor.

(2) An attorney is bound by a duty not to unreasonably interfere with or prevent personal contact between the donor and supportive friends and family of the donor.

(3) An attorney is required to exercise the judgement and care that a reasonably prudent person in comparable circumstances would exercise.

(4) An attorney shall not dispose of assets the attorney knows are subject to the donor's estate plan, unless the disposition is necessary to comply with the attorney's duties.

(5) An attorney is bound by such other duties as may be prescribed by the regulations. 2022, c. 23, s. 5.

Breach of duty

6 (1) An attorney may be found liable for breach of duty.

(2) Where the Court is satisfied that an attorney who has committed a breach of duty has acted honestly and reasonably, it may relieve the attorney from all or part of the liability. 2022, c. 23, s. 5.

Authority of Attorney

7 (1) An attorney has authority respecting the property and financial affairs of the donor in accordance with the terms of the power of attorney.

(2) A donor may give an attorney

(a) specific authority respecting certain property or financial matters; or

(b) general authority respecting all of the donor's property and financial affairs.

(3) Unless a power of attorney provides otherwise, an attorney may not delegate the authority granted under a power of attorney. 2022, c. 23, s. 5.

Exercise of authority

8 (1) Subject to subsection (2), an attorney may exercise the attorney's authority at any time after the power of attorney is executed.

(2) A power of attorney may provide that the attorney may exercise the attorney's authority only when

(a) it has been determined that the donor lacks capacity to make decisions with respect to the donor's property and financial affairs; or

(b) other specified circumstances exist.

(3) For the purpose of clause (2)(a), the following persons may determine that a donor lacks capacity:

(a) a person designated in the power of attorney to make the determination;

(b) a medical practitioner as defined in the *Medical Act*, if no person is designated in the power of attorney to make the determination or the person designated is unable or unwilling to act; or

(c) such other person as may be prescribed by the regulations.

(4) A donor may designate any person to make the determination under clause (2)(a), including an attorney.

(5) Where the power of attorney comes into effect upon the donor's incapacity, the attorney's authority may be exercised only when it has been determined that the donor lacks capacity with respect to property and financial affairs, and the attorney may not exercise the attorney's authority if, after it has been determined that the donor lacks capacity,

(a) the attorney believes on reasonable grounds that the donor has regained that capacity; or

(b) a person referred to in subsection (3) determines that the donor has regained that capacity. 2022, c. 23, s. 5.

Disqualification from acting as attorney

9 (1) A person may not act as an attorney if the person

(a) lacks capacity;

(b) has not reached the age of majority;

(c) has been convicted of an offence involving dishonesty;

(d) is an undischarged bankrupt;

(e) provides health care services or support services to the donor for compensation, unless the person is an immediate family member of the donor.

(2) A person referred to in clause (1)(c) or (d) may act as an attorney if the person

(a) has been granted a pardon for a conviction; or

(b) discloses the conviction or undischarged bankruptcy to the donor while the donor has capacity and the donor

(i) acknowledges the conviction or bankruptcy in writing, and

(ii) consents in writing to the person acting.

(3) The authority of an attorney is suspended if the attorney becomes a person referred to in clause (1)(c) or (d), unless the requirements in clause (2)(b) are met. 2022, c. 23, s. 5.

Resignation of Attorney

10 Unless the power of attorney provides otherwise, an attorney may resign by providing written notice

- (a) where the donor is capable of understanding the nature of the notice and appreciating the consequences of the attorney resignation, to
- (i) the donor,
 - (ii) the monitor appointed in the power of attorney, if any,
- and
- (iii) the other attorneys appointed in the power of attorney, if any;
- (b) where the donor is incapable of understanding the nature of the notice and appreciating the consequences of the attorney resignation, to
- (i) the monitor appointed in the power of attorney, if any,
 - (ii) the other attorneys appointed in the power of attorney, if any;
- (c) where the donor is incapable of understanding the nature of the notice and appreciating the consequences of the attorney resignation, and no monitor or other attorney was appointed in the power of attorney or is available to receive notice, to
- (i) the immediate family members of the donor, as well as any delegate appointed under a personal directive, or
 - (ii) where no immediate family members are available to receive notice, to the first available of any of the donor's
 - (A) grandparents,
 - (B) grandchildren,
 - (C) aunts or uncles,
 - (D) nieces or nephews, or
 - (E) other relatives; or
- (d) where the donor is incapable of understanding the nature of the notice and appreciating the consequences of the attorney resignation, and no person is available to receive notice under clause (c), to the Public Trustee. 2022, c. 23, s. 5.

Gift from donor's estate

11 (1) Except as otherwise expressly provided in a power of attorney or as directed by the donor, an attorney may not make a gift from the donor's estate.

(2) Notwithstanding subsection (1), an attorney may not make a gift if it would compromise the estate's ability to provide for the donor's needs. 2022, c. 23, s. 5.

Duty to preserve and keep records

12 An attorney has a duty to preserve and keep records regarding the donor's assets and liabilities and the attorney's transactions, including

- (a) a current list of all assets and liabilities under the attorney's control, including values if they are known or can be reasonably estimated by the attorney, and all records in relation thereto;

(b) all records of any transaction undertaken under the appointment as attorney, including but not limited to receipts, cancelled cheques, invoices, bank statements, copies of title, conveyances and any relevant correspondence; and

(c) such other records as may be prescribed by the regulations. 2022, c. 23, s. 5.

Accounting

13 (1) For the purpose of this Section, an accounting includes

(a) a statement of the assets and liabilities of the donor under the attorney's control at the beginning of the accounting period, with values if they are known or can be reasonably estimated by the attorney;

(b) details of any transactions involving the donor's estate, including copies of any records of those transactions, as well as bank account statements and any other statement of the value of an asset or liability that the attorney may have received; and

(c) a closing summary of the estate's current assets and liabilities under the attorney's control, with values if they are known or can be reasonably estimated by the attorney.

(2) A donor may require an attorney to account to the donor on demand for all transactions undertaken on the donor's behalf.

(3) Subject to any direction in the power of attorney, an attorney who has begun to act shall, during any incapacity of the donor in an area of authority covered by the power of attorney, account to a monitor named by the donor in the power of attorney upon demand by the monitor made at reasonable intervals.

(4) The content of an accounting to a monitor is the same as that for an accounting to a donor.

(5) A donor may exclude any person or class of persons from receiving an accounting.

(6) Subject to any direction in the power of attorney, where

(a) the power of attorney does not name a monitor;

(b) the named monitor is the attorney's spouse, registered domestic partner or common-law partner; or

(c) the named monitor is unavailable or incapable of requesting an accounting,

the attorney shall, during any incapacity of the donor in an area of authority covered by the power of attorney, account to the immediate family members of the donor who request an accounting, no more than once each calendar year.

(7) An attorney may, during any incapacity of the donor in an area of authority covered by the power of attorney, provide an accounting to immediate family members who have not requested an accounting.

(8) A spouse, registered domestic partner or common-law partner of a donor is not entitled to receive an accounting from an attorney if the spouse or partner has

(a) ceased to cohabit with the donor with the intention of ending the relationship; or

(b) made an application for a family law remedy that would alter, amend or terminate the existing legal relationship with the donor.

(9) Where an attorney is ordered to have accounts passed, the attorney shall submit the accounts for approval to the Court or, where a judge of the Court so orders, to the Public Trustee at such intervals as the judge may order and, when approved, the attorney shall file the accounts with the prothonotary of the Court where the application is heard.

(10) Nothing in this Section prevents an attorney from submitting accounts to the Public Trustee for approval and the Public Trustee shall consider accounts when submitted by an attorney. 2022, c. 23, s. 5.

Multiple attorneys

14 (1) A donor may appoint multiple attorneys to act jointly, severally or successively.

(2) Unless the power of attorney provides otherwise, the attorneys shall act jointly.

(3) Unless the power of attorney provides otherwise, where attorneys are acting jointly,

(a) a decision of the majority is deemed to be a decision of all; and

(b) where one or more of the attorneys dies, renounces the appointment, is legally incapacitated, is unwilling to act or after reasonable inquiries by another of the attorneys is unable to be found, the remaining attorney or attorneys may continue to act without that attorney or those attorneys. 2022, c. 23, s. 5.

Notice of attorney acting

15 (1) When an attorney begins to act, the attorney shall give notice to the persons to whom notice is required to be given, if any, as specified in the power of attorney or as prescribed by the regulations, but the attorney must give notice to the donor and, where one was appointed, the monitor.

(2) Unless the power of attorney provides otherwise, where no person is named in the power of attorney as a monitor or designated to receive a notice of the attorney acting, or where no named monitor or recipient is capable of receiving the notice, the attorney shall deliver the notice to the immediate family members of the donor, as well as any delegate appointed under a personal directive. 2022, c. 23, s. 5.

Monitor

- 16** (1) A donor may appoint a monitor in a power of attorney.
- (2) An attorney cannot act as monitor.
- (3) A monitor may
- (a) visit and communicate with the donor at any reasonable time;
 - (b) request records from the attorney kept under Section 12;
 - (c) demand an accounting from the attorney in accordance with subsection 13(3); and
 - (d) apply for a Court order under subsection 18(1).
- (4) Where a monitor has reason to believe that an attorney is not acting in accordance with this Act, the monitor shall advise
- (a) the donor; and
 - (b) the other attorneys appointed in the power of attorney, if any.
- (5) A monitor may resign by providing written notice to the donor and the attorneys appointed in the power of attorney, unless the power of attorney provides otherwise. 2022, c. 23, s. 5.

Variation or revocation

- 17** (1) Where a donor has the capacity to do so, the donor may vary a power of attorney by making a variation that meets the requirements in Section 3.
- (2) A donor may revoke a power of attorney unless the donor is incapable of understanding and appreciating the nature and effect of the revocation.
- (3) After varying or revoking a power of attorney, the donor shall give written notice to each attorney and such other persons as prescribed by the regulations.
- (4) A variation or revocation is effective when notice is given under subsection (3) or on a later date stated in the notice. 2022, c. 23, s. 5.

Court order

- 18** (1) On application by an attorney, a monitor, the Public Trustee or an interested person, the Court may make any order it considers appropriate, including an order
- (a) providing directions with respect to a power of attorney;
 - (b) declaring that a power of attorney is valid despite it not meeting the requirements in Section 3;
 - (c) authorizing an attorney to make, change or revoke a beneficiary designation;

- (d) requiring an attorney to provide records referred to in Section 12 to the Court or to another person;
 - (e) requiring the release of information or records;
 - (f) requiring an attorney to attend to show cause for the attorney's failure to do anything that the attorney is required to do as attorney or by an order made under this Act;
 - (g) allowing or disallowing all or any part of the remuneration claimed by an attorney;
 - (h) terminating the authority of an attorney or terminating a power of attorney;
 - (i) varying the terms of a power of attorney or substituting another person for an attorney; and
 - (j) respecting costs as the Court considers appropriate.
- (2) The Court may make an order under clause (1)(b) if
- (a) the donor had the capacity to make the power of attorney; and
 - (b) the power of attorney embodies the intentions of the donor.
- (3) The Court may make an order under clause (1)(i) if
- (a) the power of attorney does not provide that the Court may not do so;
 - (b) the donor lacks the capacity to make the variation or substitution;
 - (c) the variation or substitution is justified by circumstances that the donor likely did not foresee; and
 - (d) the variation or substitution is in the best interests of the donor. 2022, c. 23, s. 5.

Existing power of attorney

19 (1) A power of attorney given before the coming into force of this Section, where in force on the day this Section comes into force, continues in force as if given on or after that day and the provisions of this Act apply to it.

(2) Powers of attorney given before the coming into force of this Section are exempt from

- (a) the requirement in subclause 3(1)(b)(ii);
- (b) the requirements in clause 3(1)(d);
- (c) the application of clauses 9(1)(b) to (e);
- (d) the application of clause 14(3)(a). 2022, c. 23, s. 5.

Power of attorney made outside of Province

20 A document made outside of the Province is deemed to be a valid power of attorney under this Act if

- (a) a person gives another person authority under the document to act on the person's behalf in relation to matters of property and finances; and
- (b) the document is valid according to the law of the place where it was made. 2022, c. 23, s. 5.

Regulations by Minister

21 (1) The Minister may make regulations

- (a) respecting forms or notices to be used for the purpose of this Act;
- (b) prescribing other records under clause 12(c);
- (c) prescribing the form of accounting for the purpose of Section 13;
- (d) prescribing any other matter or thing required or authorized by this Act to be prescribed by the regulations;[.]

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2022, c. 23, s. 5.

Regulations by Governor in Council

22 (1) The Governor in Council may make regulations

- (a) prescribing additional duties under subsection 5(5);
- (b) prescribing other persons who may determine capacity under clause 8(3)(c);
- (c) prescribing specific offences under clause 9(1)(c);
- (d) prescribing persons who must receive notice under subsections 15(1) and 17(3);
- (e) defining, enlarging or restricting the meaning of any word or expression used but not defined in this Act;
- (f) respecting any other matter or thing the Governor in Council considers necessary or expedient to carry out the intent of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2022, c. 23, s. 5.