**What is a Continuing Power of Attorney for Property?**

A Continuing Power of Attorney for Property is a legal document that gives someone you trust the right to continue to act and make decisions about your property even when you are no longer able to. Anything you own is considered your property. This includes houses, cars, personal belongings, or bank accounts. There are a lot of people who could control your property and many things they could do with it. A Continuing Power of Attorney for Property will let you decide who manages your property and what they will do with it.

A Continuing Power of Attorney for Property lets you choose a “substitute decision-maker”. This person will make decisions about your property if you cannot make them for yourself because of illness, mental health issues, or diseases such as Alzheimer’s. This person is called your “**attorney**”.

A Continuing Power of Attorney for Property is more secure than just telling someone what you want because it is a written legal document and it lets you decide who your attorney is. It lets you choose someone whom you trust and allows you to leave instructions for how you want your property to be taken care of. For example:

* Rachel wants to sell her house only when her daughter gets married. Rachel gets into an accident and is unable to manage her property. Rachel has a Continuing Power of Attorney for Property that names Jack as her attorney. The document says that he cannot sell the property for Rachel until her daughter is married. If Rachel did not have this Continuing Power of Attorney for Property, her wishes might not have been followed.
* Joanne wants her car to be sold to pay for her move into a care facility, but she is unable to make the sale herself. The attorney named in her Continuing Power of Attorney for Property will do this for her.

**How does the Continuing Power of Attorney for Property work?**

Once you create a Continuing Power of Attorney for Property, you can leave instructions or your wishes about how to manage your property in writing, or by telling your attorney, or by any other means of communication. If you give instructions or specific information about what you want and do not want, your attorney must follow your instructions and wishes for your property if you become mentally incapable. Your instructions and wishes will only apply if:

* you made them voluntarily (in other words, you were not forced)
* you were **mentally capable** when you made them
* you made them when you were at least 18 years old.

In this case, **mentally capable** means you know:

* what property you have
* the general value of your property
* the obligations you have towards people who are financially dependent on you
* what power you are giving your attorney
* that your attorney has to explain their decisions
* that your property value might decrease if your attorney does not properly manage your property
* that your attorney might take advantage of you
* that you can cancel your Continuing Power of Attorney for Property as long as you are mentally capable

Your attorney can do anything with your property that you could. For example, your attorney can sign cheques for you, buy property, sell property, and so on.

Your attorney **cannot**:

* Make your will
* Change your will
* Give someone a Continuing Power of Attorney for Property for you
* Make decisions about your personal care

**When does a Continuing Power of Attorney for Property start?**

The Continuing Power of Attorney for Property starts as soon as two people witness you signing the document. If you want it to start later in the future (for example, when you become mentally incapable of making property decisions), you can state that it starts at a later date. **Mentally incapable** means you do not understand the nature of your decisions, the choices available to you, and/or the consequences of your decision(s).

Normally, a Continuing Power of Attorney for Property can only be made if you are mentally capable at the time. However, there are some situations where you may be able to make one even if you are considered mentally incapable. This can happen if you understand the general power you are giving and understand what could happen from making certain decisions. For example:

* Maria does not remember how much money she has to pay for her mortgage but remembers that she has a mortgage that her son pays.
* Laura is diagnosed with Korsakoff ’s syndrome and needs full time treatment at a care facility. Laura needs to decide whether or not to sell her house to pay for her treatment. While, Laura does not understand the process of selling her house, she does understand that someone else can sell it for her. She also understands what could happen if she does not sell her house.

**Who decides if I am mentally incapable of making property decisions?**

There are a few ways to determine if you are mental incapable of making your own property decisions. It depends on your situation, but in most cases, your attorney will decide this for you. You can name someone other than the attorney to confirm that you are mentally incapable if you want.

* This person can be your doctor, family member or anyone else that you trust for the job; or
* You can state this person should be a certain type of professional, such as a nurse, social worker or psychologist; or
* You can request someone to confirm your capability without naming them. When you do this, someone trained to assess mental capability will determine your mental capacity, called a **“capacity assessor”.**

If you choose to name someone other than your attorney to decide if you are mentally incapable, this means that your attorney cannot start making property decisions for you until that other person confirms that you are incapable of making property decisions.

If a healthcare practitioner or an evaluator determines that you are mentally incapable, you can have this decision reviewed by the Consent and Capacity Board. The **Consent and Capacity Board** is an independent organization formed by the government of Ontario that can review decisions about a person’s mental capability. If it determines that you are mentally incapable, the Board can appoint someone to be your representative. This representative will become your substitute decision-maker. A family member or friend can apply to be your representative or the court can appoint someone.

**How do I get a Continuing Power of Attorney for Property?**

If you are 18 years or older and mentally capable you can make a Continuing Power of Attorney for Property. There are two ways to do this:

* You can talk to your lawyer who can prepare one for you.
* You can use a form from the Office of the Public Guardian and Trustee: <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.pdf>

After you complete the form you will need 2 witnesses to prove that you signed the Continuing Power of Attorney for Property. Your witnesses can be almost anybody. But witnesses CANNOT be:

* Your [spouse/partner](http://owjn.org/owjn_2009/women-like-me/older-women/363-power-of-attorney-for-property#spouse)
* Your child/children
* Your attorney, or your attorney’s spouse or partner
* Someone who is under 18
* Someone who has a “[Guardian of Property](http://owjn.org/owjn_2009/women-like-me/older-women/363-power-of-attorney-for-property#guardianp)” or “[Guardian of the Person](http://owjn.org/owjn_2009/women-like-me/older-women/363-power-of-attorney-for-property#guardian)” appointed for them by the court because they are not mentally capable of managing their property or making personal care decisions.

**Who can be my attorney?**

You can choose anyone that you trust to be your attorney as long as they are at least 18 years old and mentally capable. You should choose someone who is good with money.

**Do I have to pay my attorney?**

Attorneys for property are paid, unless you say otherwise If you want to set the amount your attorney will be paid or you do not want your attorney to be paid, you can state this information in the Continuing Power of Attorney for Property.

**Can my attorney go against my instructions or wishes?**

If the attorney thinks it is in your best interest to go against your instructions and/or wishes she or he will have to apply to the Consent and Capacity Board for permission. For example:

* Anisha leaves instructions to never sell her car but her attorney thinks that she would have decided differently if she knew that she needed the money to pay for her mortgage. Anisha’s attorney can apply to the Board for permission to go against Anisha’s original instructions and sell her car. Her attorney has to convince the Board that Anisha would have changed her instructions if she was still mentally capable now.

**How long does a Continuing Power of Attorney for Property last?**

A Continuing Power of Attorney for Property is valid until you die or:

* you cancel it
* you make a new Continuing Power of Attorney for Property (unless you state that you want more than one Continuing Power of Attorney for Property)
* your attorney resigns, becomes incapable, or dies and you have not included a substitute attorney or named more than one attorney
* the court appoints a substitute decision-maker for you

**How do I cancel a Continuing Power of Attorney for Property?**

As long as you are still mentally capable, you can cancel a Continuing Power of Attorney for Property. To cancel it, you must state in writing that you are cancelling it. You need two witnesses to prove that you signed this statement. Your witnesses have to be present to watch you sign the cancellation. You should give a copy of the cancellation to anyone that had a copy of the previous Continuing Power of Attorney for Property. If you can, you should destroy a Continuing Power of Attorney for Property that is no longer valid.

**How do I make sure my attorney does not take advantage of me?**

* Choose someone that you trust to be your attorney.
* Specifically outline what you want your attorney to do.
* Include another person you trust as an attorney. When you have two attorneys (acting alone or together) they might prevent each other from taking advantage of you.
* If you think your attorney is stealing from you, tell someone right away so they can report it to the police.

What happens if I do not have a Continuing Power of Attorney for Property?

If you do not have a Continuing Power of Attorney for Property and you become mentally incapable of making your own property decisions, a substitute decision-maker is allowed to make decisions about your property. Usually, the other substitute decision-maker is a family member. For example:

* Nina suffers from dementia and becomes incapable of making decisions about her house. Nina does not have a Continuing Power of Attorney for Property.
* Nina’s family may manage her property or someone can ask the court to make her or him Nina’s formal **Guardian** **of** **Property**.

The Guardian of Property is someone appointed by the court to manage your property when you are unable to. Your Guardian will try to help you understand the decisions. If that is not possible, your Guardian will make decisions as you indicated or in your best interest. If there is no one to become your Guardian and your property is at risk, the Court will appoint the **Office** **of** **the** **Public** **Guardian** **and** **Trustee**, part of the Attorney General of Attorney, with ‘**statutory** **guardianship**’. This lets the Office of the Public Guardian and Trustee formally take care of your property. If the Office of the Public Guardian and Trustee has statutory guardianship, a family member or a friend can apply to them to become the “**Guardian of Property”**.
Example: Christina has amnesia and is mentally incapable of making property decisions for herself. Christina has not made a Continuing Power of Attorney for Property and does not have family to take care of her property. The Office of the Public Guardian and Trustee investigates to confirm if Christina is mentally incapable. If they find that she is, they go to court to become Christina’s statutory guardian. Christina’s best friend can apply to the Office of the Public Guardian and Trustee to become her Guardian of Property.

**When can the court appoint a Guardian for me?**

The court will only appoint a Guardian for you if:

* you are mentally incapable and do not have a Continuing Power of Attorney for Property or relatives managing your property
* you do not have a representative appointed by the Consent and Capacity Board
* your attorney does not follow your wishes
* your attorney does not act in your best interest
* you are unable to cancel the Continuing Power of Attorney for Property or name a new attorney
* the court agrees with a friend or family member’s request to be your Guardian, taking over for your attorney.

**Glossary of Terms**

**Guardian of the Person**Someone who is appointed by the court to make personal decisions for a person who is mentally incapable of doing so for herself or himself. A Guardian of the Person is appointed after a person has become incapable. This usually happens because the person never made a Power of Attorney.

**Guardian of Property**
Someone who is appointed by the court to manage the financial affairs of a person who is mentally incapable of doing so for herself or himself. A Guardian of Property is appointed after a person has become incapable. This usually happens because the person never made a Power of Attorney.

**Partner**A partner is a person with whom you have lived for at least a year and with whom you share a close personal relationship that is of primary importance in both of your lives.

**More Legal Resources**

For more information and help with your Continuing Power of Attorney for Property contact:

**Advocacy Centre for the Elderly**
2 Carlton Street, Suite 701
Toronto, Ontario, M5B 1J3
Phone: 416-598-2656
<http://www.advocacycentreelderly.org/index.php>

**Community Legal Education Ontario (CLEO)**
119 Spadina Avenue, Suite 600
Toronto, ON, M5V 2L1
Phone: 416-408-4420
<http://www.cleo.on.ca/en/publications/continuing>

**Consent and Capacity Board Office of the Public Guardian and Trustee**
151 Bloor Street West, 10th Floor 720 Bay Street, 11th Floor
Toronto, ON, M5S 2T5 Toronto, ON, M7A 2S9
Toll Free Phone: 1-866-777-7391 Toll Free Phone: 1-800-518-7901
Phone: 416-327-4142 Phone: 416-326-2220
<http://www.ccboard.on.ca/scripts/english/index.asp> <http://www.attorneygeneral.jus.gov.on.ca/english/default.asp>

**Legal Aid Ontario**
Toll Free Phone: **1-800-668-8258**
Phone: 416-979-1446
<http://www.legalaid.on.ca/en/getting/default.asp>

**National Institute for the Care of the Elderly (NICE)**
263 McCaul Street, Room 328
Toronto, ON, M5T 1W7
Phone: 416-978-0545
<http://www.nicenet.ca/>

**Ontario Seniors’ Secretariat**
777 Bay Street, Suite 601C
Toronto, ON, M7A 2J4
Toll Free: 1-888-910-1999
<http://www.seniors.gov.on.ca/en/index.php>