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Powers of Attorney and Protection Mandates

**DIFFERENCES
BETWEEN THEM**



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Setting the Scene

Many people confuse powers of attorney and protection mandates.

They are used in different situations.

This pamphlet explains the differences.

The law changes. This pamphlet is up to date to November 2020.

This pamphlet has legal information, not legal advice. If you need legal advice on a specific situation, consult a lawyer or notary.

What is a power of attorney?

It is a kind of contract. It lets you name someone to do things for you.

You choose what this person can do for you. Also, you keep the right to supervise this person.

Because you keep the right to supervise, a power of attorney can only be used while you still have all your mental abilities.

Here are examples of when you might use one:

- away on a long trip
- physical mobility challenges
- lack of time to manage all your affairs

What can I ask someone to do for me?

Here are examples:

- banking
- pay bills
- manage investments
- deal with a company (cable TV, etc.)
- sell a piece of property

You can see that a power of attorney is for managing money and property.

Because it involves important responsibilities, it's best to use a power of attorney only when you need it, and for a specific time period.

How do I make a power of attorney?

You can make one on your own or with a lawyer or notary.

If you make it on your own, there is no special format to follow.

But there is important information to include. The next section lists some key information.

The websites of the Autorité des marchés financiers and Justice Québec have English models of powers of attorney.

Some institutions, like banks, might ask you to use their forms. You are not legally required to if your power of attorney is complete and clear.

What do I put in a power of attorney?

Here is important information to include:

- the date it is made
- how long it will last
- your name and signature
- name and signature of the person (or people) given powers
- the powers you are giving and limits on them
- how the person will report to you (e.g., provide bank slips)

Can I end a power of attorney?

Yes, at any time, even if it has an expiry date.

Here are important things to do if you end it:

- get back all copies
- write on originals and copies that you have cancelled it
- if a lawyer or notary made it, inform that person
- tell people or institutions involved, such as your bank

What is a protection mandate?

It lets you name one or more people to care for you and manage your money and property if you become legally incapacitated.

Legal incapacity means a serious health issue is interfering with your decision-making.

Important! Don't confuse physical health problems with incapacity: you can have serious physical problems and still make your own decisions.

When can this mandate be used?

Only after it is activated by a court. This activation process is called "homologation."

Homologation requires two reports: one by a doctor, the other by a social worker. The reports give an opinion on the degree of incapacity and need for protection.

How do I make a protection mandate?

There are two ways:

- with a notary or lawyer
- you or someone else makes it and you sign it before two witnesses

The website of Quebec's public curator (Curateur public du Québec) has a free form in English for a mandate before witnesses.

Important!

You can only make these two kinds of documents while you have your mental abilities and can make "informed" decisions. This means you understand what you are agreeing to.

