

# Using a Protection Mandate

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## Where to Get Started?

A guide to help mandataries homologate a protection mandate for a person who is incapacitated



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INFORMATION EMPOWERS



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Éducaloi's mission is to explain to Quebecers the law, their rights, and their responsibilities in everyday language that is easy to understand.

## About this guide

This guide is intended for mandataries named in a protection mandate. It explains homologation, which is a procedure that activates the mandate so the mandatary can use it.

Although it is possible to homologate a mandate without the assistance of a notary or lawyer, legal procedures are complex, and this guide is not meant to replace the advice of a notary or lawyer.

### Important Notice

The law changes. This guide is up to date to February 2023. Visit Éducaloi's website at [educaloi.qc.ca/seniors](https://educaloi.qc.ca/seniors) to see if there is a more recent version of this guide.

This guide is meant as legal information, not legal advice. If you need advice on a specific situation, consult a notary or a lawyer. This guide applies only in Quebec.

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[www.cnq.org/en/](https://www.cnq.org/en/)

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# Homologation: Your responsibility as a mandatory

Have you been named as a mandatory in a protection mandate? A protection mandate gives the mandatory the power to care for a person and manage their finances if they become incapacitated.

To use a protection mandate, you must first complete a procedure with a notary or in court. The procedure is called “homologation” of the protection mandate.

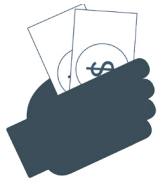
Homologation means obtaining a judgement that activates the mandate. You need this judgement if you wish to carry out the powers granted to you in the mandate (such as managing bank accounts and choosing medical treatments).

As a mandatory, you’re responsible for taking these steps when the person who named you becomes incapacitated.



## **What about mandates in case of incapacity?**

Protection mandates used to be called “mandates in case of incapacity”. The name has changed, but the rules are the same.



### **How much does it cost?**

Homologating a protection mandate can cost between several hundred and several thousand dollars. The costs include the court's fees and bailiff fees to send your homologation request to the person who named you as a mandatary. If you hire a notary or lawyer to assist you, you may also have to pay their fees.

As mandatary, you're responsible for paying these fees. However, once the mandate has been homologated, you will normally be reimbursed out of the funds of the incapacitated person.



### **How long does it take?**

It takes at least six months to obtain all the documents you'll need for the homologation procedure.

Once you have all the necessary documents, the homologation procedure itself usually takes three to six months.

# Why should you have the mandate homologated?



You can't use the protection mandate automatically, even if a doctor has concluded that the person is incapacitated. You must have the mandate homologated before you can carry out the powers you've been granted.

For example, the mandate must be homologated so you can access bank accounts belonging to the incapacitated person and manage their finances. Banks can insist that you have the protection mandate homologated.

Homologation is necessary even if you have power of attorney to represent the incapacitated person. A power of attorney is no longer valid once the person becomes incapacitated.

You won't be able to choose medical treatments for the incapacitated person under the protection mandate if it hasn't been homologated. Therefore, homologation is essential if you want to have a say in decisions concerning the incapacitated person.

# When should you homologate the mandate?



In general, you need to homologate a protection mandate when the person is no longer able to look after their own well-being or their finances. In other words, the person has become incapacitated.

Sometimes the incapacity is gradual, for example, if it's caused by the deterioration of mental or physical abilities due to age.

The person's family doctor or professionals at their health-care facility can help you determine if the person has become incapacitated.

## **The opinion of the incapacitated person**

You should discuss things with the incapacitated person, if possible, to find out if they agree with having the protection mandate homologated. The person's opinion is important, even if their mental or physical abilities have been reduced.

You can also discuss the homologation procedure with family members and other people close to the incapacitated person.

# What is the procedure for homologating a protection mandate?

The homologation procedure can take place in two different ways:



**Before a notary**



**In court**



## **Opposition to the request for homologation**

The incapacitated person, or other interested people such as family members, can oppose the request for homologation. For example, they might oppose it if they feel you're not the best person to represent the incapacitated person.

**This guide explains the homologation procedure only in cases where no one opposes it.** If there's opposition, the procedure for homologating a mandate is different, and it's best to consult a lawyer in this situation.



## Procedure before a notary

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See [Appendix 1](#) for a flow-chart illustrating the procedure.

The first step is to hire a notary of your choice. You can choose one who works near the incapacitated person's home because the homologation procedure is usually presented at the courthouse closest to the person's residence.

To find a notary, you can use the "Find a Notary" tool on the [website of the Chambre des Notaires du Québec](#) (notaries' association).

The notary can then begin the homologation procedure. This involves:

- drawing up the request for homologation
- sending the request to the incapacitated and to other interested parties
- obtaining all necessary documents
- meeting with the incapacitated person
- filing all necessary documents in court

Appendix 1 describes the procedure before a notary. As mentioned above, you can't get a protection mandate homologated by a notary if someone opposes the homologation. In that case, the file is transferred to the court and the notary stops working on it.

If you believe someone is going to oppose the homologation, you can choose to homologate it in court to avoid delays.

# Procedure before the courts without opposition

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See [Appendix 2](#) for a flow-chart illustrating the procedure.

The homologation procedure in court can either be done on your own or with the help of a notary or lawyer. The procedure is usually presented at the courthouse nearest the incapacitated person's residence.

There are several steps:

- drawing up the homologation request
- sending the request to the incapacitated person and to other interested parties
- going to court to present the request
- filing all necessary documents in court

Appendix 2 describes the procedure in court if there's no opposition. If there is opposition, the procedure still takes place in court, but the steps are different and it's best to consult a lawyer or notary in this situation.

# Which documents will you need?

- 1. **Medical** assessment of the incapacitated person
- 2. **Psychosocial** assessment of the incapacitated person
- 3. **Protection mandate**
- 4. Search certificate for a protection mandate from the **Chambre des notaires** (notaries' association)
- 5. Search certificate for a protection mandate from the **Barreau du Québec** (Quebec bar)
- 6. **Birth certificate** of the incapacitated person

Other documents are sometimes necessary. For example, if the incapacitated person is married, you might need the marriage certificate.

If you hired a notary or a lawyer to carry out the homologation procedure, they can obtain the documents for you.

# 1. Medical assessment

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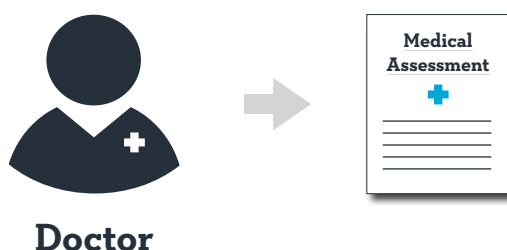
You'll need a **medical assessment** confirming that the person is incapacitated. You can ask the person's family doctor to complete the assessment free of charge. You can also ask the person's health-care facility (for example, a CHSLD) to do it for free.

The doctor will evaluate the person's state of health and their ability to take care of themselves and their finances. The assessment must conclude that the person is indeed incapacitated.

## For more information

You can call **Info-Social** at 811 for more information about the medical assessment.

To help you understand the assessment, you can also refer to the form used by doctors. The form, entitled "Medical assessment related to an application to institute a tutorship to a person of full age or to homologate a protection mandate", is available on [Quebec.ca](http://Quebec.ca).



## 2. Psychosocial assessment

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In addition to the medical assessment, you'll need to obtain a **psychosocial assessment** confirming that the person is incapacitated. A social worker does this assessment. You can ask the person's health-care facility (for example, a CHSLD) to perform the assessment free of charge.

The social worker assesses the person's psychosocial situation by analyzing their daily routine and family situation. The social worker evaluates the person's level of autonomy when carrying out everyday activities. The assessment must conclude that the person is indeed incapacitated.

### For more information

You can call **Info-Social** at 811 for more information about the psychosocial assessment.

To help you understand the assessment, you can also refer to the form used by social workers. The form, entitled "Psychosocial assessment for the homologation of a protection mandate", is available on [Quebec.ca](http://Quebec.ca).



### 3. Protection mandate

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You'll need a certified copy of the **protection mandate** if it was prepared by a notary. If it wasn't prepared by a notary, you'll need the original and a sworn declaration by one of the witnesses who was present when it was signed. A photocopy of the mandate isn't enough.

You can ask the incapacitated person where they keep the protection mandate.

If the protection mandate was prepared by a notary, but you don't have a certified copy, you can obtain one by doing a protection mandate search with the Chambre des notaires du Québec. This makes it possible to locate the notary who has the original of the mandate.

## 4. Search certificate for a protection mandate from the Chambre des notaires

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You must obtain a search certificate by requesting one from the Chambre des notaires du Québec. This certificate is necessary to confirm that the protection mandate you have is the most recent one. You must obtain this certificate even if you believe you have the most recent version of the mandate.

You must complete and print out the form “Request for a Search of Mandate” available from the [website of the Chambre des notaires du Québec](#).

Next, you must send your request, along with the documents indicated on the form, to the following address:



**Registers of Testamentary Dispositions and Mandates of the  
Chambre des notaires du Québec  
2045 Stanley Street, Suite 101  
Montreal, Quebec H3A 2V4**

You can contact the Chambre des notaires by calling 1-800-263-1793 for more information.

## 5. Search certificate for a protection mandate from the Barreau du Québec

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You must also obtain a search certificate from the Barreau du Québec. This certificate is required to confirm that the protection mandate you have in your possession is the most recent one. You must obtain this certificate even if you believe you have the most recent version of the mandate.

You must complete and print the search request form available on the [website of the Barreau du Québec](#).

You must then send your request, along with the documents indicated on the form, to this address:



**Registers of Wills and Mandates of the Barreau du Québec**  
**Maison du Barreau**  
**445 Saint-Laurent Blvd.**  
**Montreal, Quebec H2Y 3T8**

You can call the Barreau du Québec at **1-844-954-3411** for more information.

## 6. Birth certificate of the incapacitated person

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You'll need the original birth certificate of the incapacitated person. You can ask the person if they have it.

If the incapacitated person doesn't have their birth certificate, you must order one on the website of the [Directeur de l'état civil du Québec](#) (registrar of civil status).



### For more information on protection mandates

- **Visit Éducaloi's website:** [educaloi.qc.ca/en](http://educaloi.qc.ca/en)
- **Contact the Curateur public du Québec (public curator):** [www.quebec.ca/en/government/departments-and-agencies/curateur-public](http://www.quebec.ca/en/government/departments-and-agencies/curateur-public)

### To meet with a notary or lawyer free of charge

Contact your nearest Centre de justice de proximité du Québec (local community justice centre): [www.justicedeproximite.qc.ca](http://www.justicedeproximite.qc.ca)

### To find out if you qualify for legal aid

Call the [legal aid office nearest you](#) to make an appointment.

### To find a notary

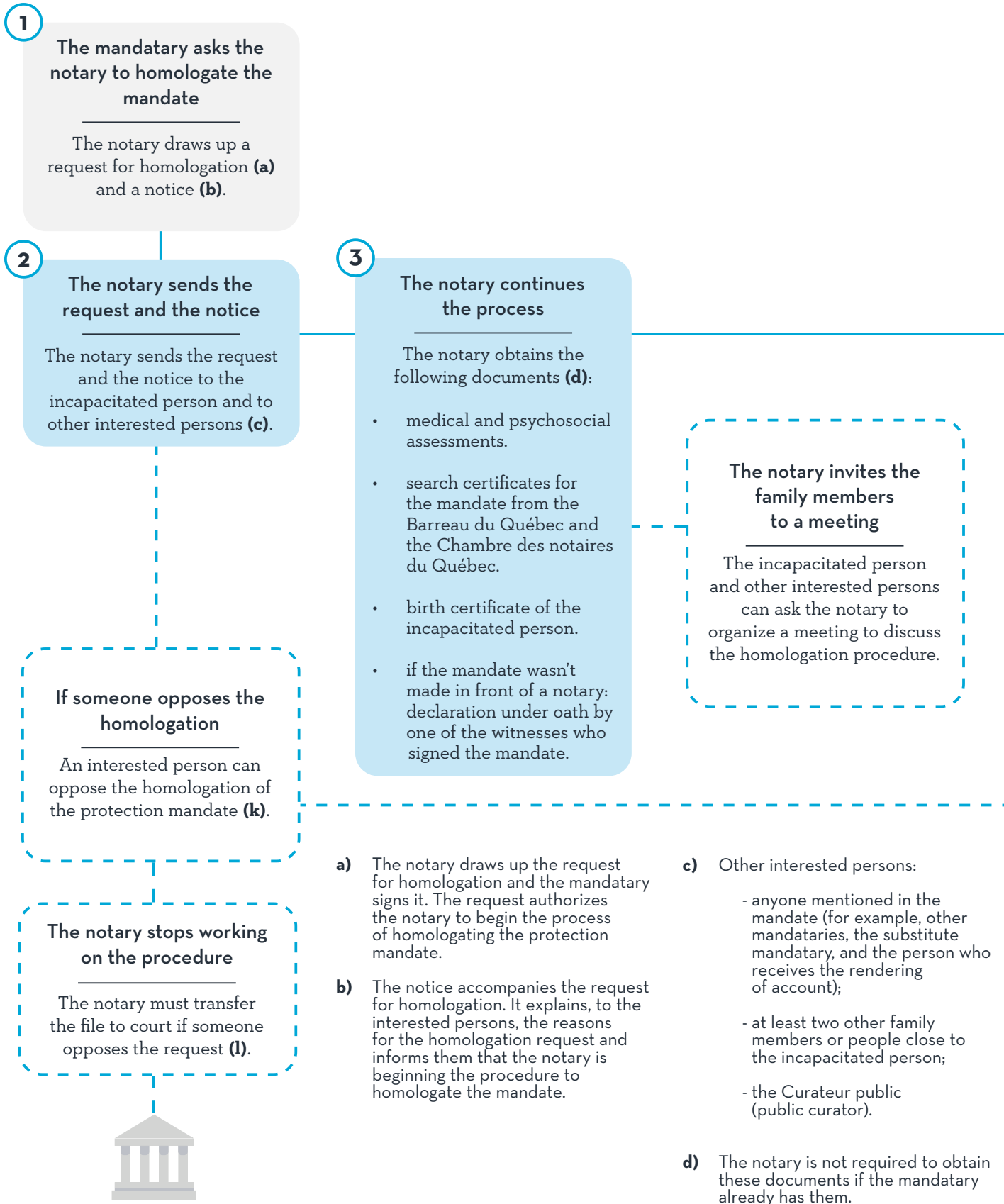
Visit the website of the [Chambre des notaires' referral service](#).

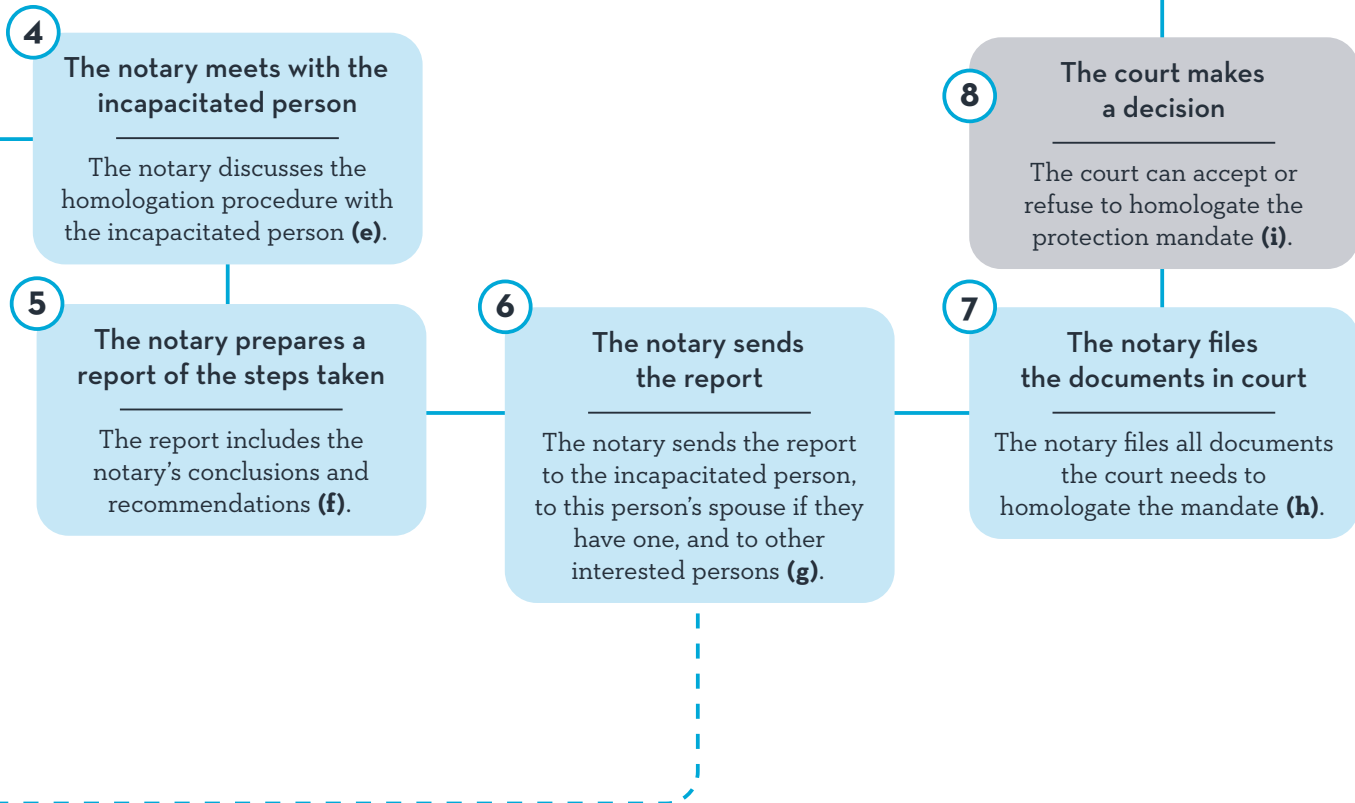
### To find a lawyer

Visit the website of the [Barreau du Québec's referral service](#).

# Appendix 1

## Procedure before a notary





**4** **The notary meets with the incapacitated person**  
 The notary discusses the homologation procedure with the incapacitated person **(e)**.

**5** **The notary prepares a report of the steps taken**  
 The report includes the notary's conclusions and recommendations **(f)**.

**6** **The notary sends the report**  
 The notary sends the report to the incapacitated person, to this person's spouse if they have one, and to other interested persons **(g)**.

**7** **The notary files the documents in court**  
 The notary files all documents the court needs to homologate the mandate **(h)**.

**8** **The court makes a decision**  
 The court can accept or refuse to homologate the protection mandate **(i)**.

**9** **The court sends the judgment**  
 The court sends the judgment to the incapacitated person, the mandatary, and other interested persons **(j)**.

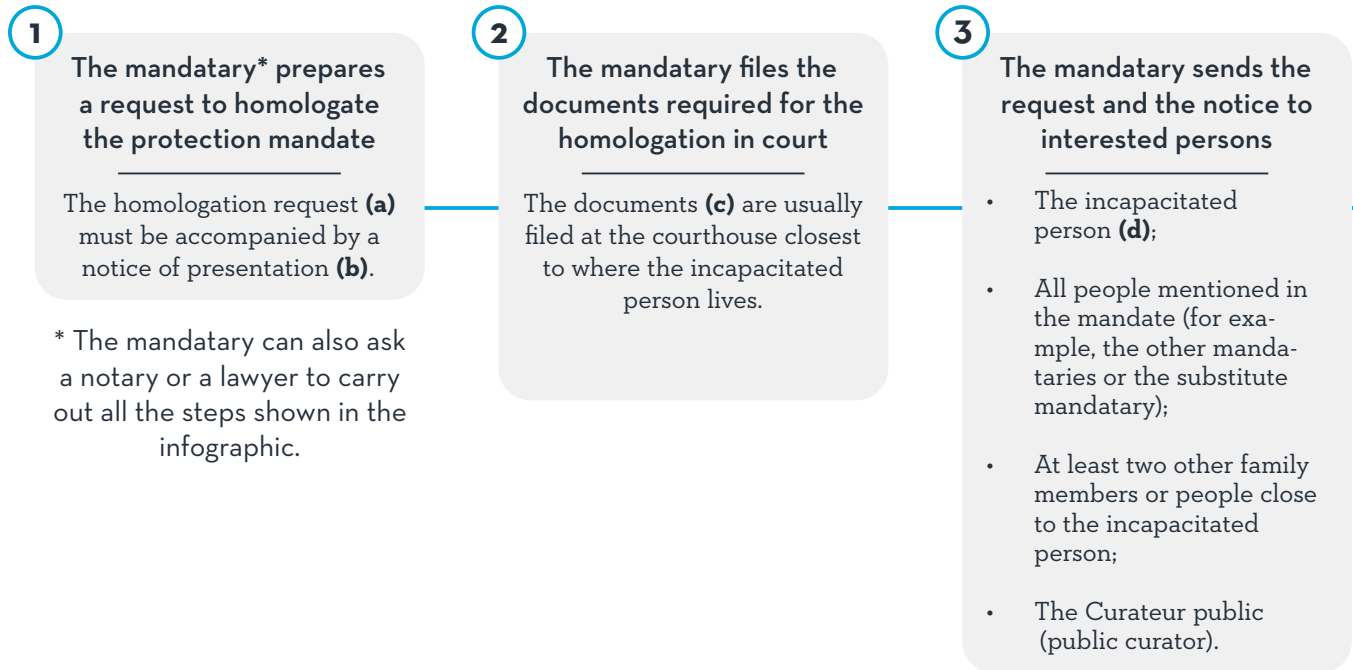
- e)** The meeting allows the notary to verify that the powers granted to the mandatary in the protection mandate are reasonable given the person's level of incapacity.
- f)** The notary can recommend homologation of the protection mandate. The notary can also recommend not to homologate the mandate if the notary believes it's not in the best interests of the incapacitated person.
- g)** The incapacitated person and other interested persons can oppose the request for homologation if they don't agree with the notary's conclusions or recommendations.

- h)** Documents required:
  - protection mandate;
  - medical and psychosocial assessments;
  - search certificates for the mandate from the Barreau du Québec and the Chambre des notaires du Québec;
  - birth certificate of the incapacitated person;
  - rendering of account and conclusions of the steps take by the notary;
  - other documents may be required, depending on the situation.

- i)** The court can homologate the mandate by issuing a judgment confirming the person's incapacity and authorizing the mandatary to exercise the powers granted under the protection mandate. The court can also refuse to homologate the mandate, for example, if it concludes there's no incapacity.
- j)** The judgment allows the mandatary to exercise the powers granted under the mandate.
- k)** For example, people can oppose the homologation request if they believe the mandatary isn't able to take on the responsibilities involved in this role.
- l)** The homologation procedure is different if someone opposes the homologation. In this case you should consult a lawyer to continue the homologation procedure.

# Appendix 2

## Procedure before the courts without opposition



- a)** The homologation request contains information that explains why the mandatory is asking the court to homologate the protection mandate.
- b)** The notice indicates the date and time when the homologation request will be presented and the address of the courthouse. The notice also contains a list of the documents the parties will use as evidence.
- c)** The following documents are required for homologation:
  - copy of the homologation request and notice of presentation;
  - protection mandate;
  - medical and psychosocial assessments;
  - search certificates for the mandate from the Barreau du Québec and the Chambre des notaires du Québec;
  - birth certificate of the incapacitated person;
  - other documents may be required, depending on the situation.
- d)** The request and notice must be sent to the incapacitated person by bailiff but can be sent by registered mail to the other interested persons.
- e)** The incapacitated person must go to court if they're able to. Other interested persons don't have to go to court if they have nothing to say to the judge.
- f)** This testimony helps the court to verify that the powers granted to the mandatory are reasonable given the person's level of incapacity.
- g)** The court sends a notice that gives the date and time of the meeting and the address of the courthouse where it will take place.
- h)** The court can homologate the mandate if it considers the person to be incapacitated and considers that homologation is in the person's best interests. The court can also refuse to homologate the mandate, for example, if the evidence shows there's no incapacity.
- i)** The court sends the judgment to the incapacitated person, the mandatory, and other interested persons.
- j)** The court can rule that the person is incapacitated but refuse to homologate the protection mandate because it concludes the mandatory is unable to carry out their duties.

## APPEARANCE IN COURT

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### The interested persons go to court

Persons who have received the request for homologation go to court on the date and time shown in the notice of presentation **(e)**.

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### The incapacitated person testifies in court

If the incapacitated person isn't able to go to court, the court clerk can travel to meet with the person and get their testimony **(f)**.

The court may decide to hold a meeting of the family and other people close to the incapacitated person

The meeting allows family members and other people close to the incapacitated person to discuss the need to homologate the protection mandate **(g)**.

6

### The court renders a judgment

The court either accepts or refuses to homologate the protection mandate **(h)**.

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### If the court refuses to homologate the mandate

The court can protect the person by rendering a judgment confirming their incapacity but refusing homologation of the mandate. In this case the court orders tutorship **(j)**.

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### If the court agrees to homologate the mandate

The court renders a judgment confirming the person's incapacity and authorizing the mandatary to exercise the powers granted under the protection mandate **(i)**.





# Éducaloi

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### A Web Guide to help you understand the law and your rights

To complement this guide, Éducaloi has a Web Guide for seniors. It covers these and other topics:

- Incapacity and loss of autonomy
- Successions and estate planning
- Wills
- Housing for seniors
- Protection from financial fraud and abuse
- Legal issues related to health
- Planning funerals



### Practical tools for seniors

All our information tools for seniors, including these, are available for free online. Please visit our website to download them or to order print copies.

 [educaloi.qc.ca/seniors](http://educaloi.qc.ca/seniors)