

Protection Mandates

Naming Someone to Act for You





éducaloi

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

Important Notice

The law changes. This guide is up to date to February 2023. Visit Éducaloi's website at 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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Contributing to the excellence of notarial practice, encouraging the evolution of the law, promoting access to preventive justice—these are all missions of the Chambre. There is a single objective: the public's protection.

<https://www.cnq.org/en/>

*The Chambre des notaires is not responsible for the content of this guide.

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What Is a Protection Mandate?

It's a document that lets you name, in advance, someone to look after your well-being and your property if you can't do this yourself.

The law calls the inability to make decisions or to act for yourself "incapacity."

Incapacity can be temporary or permanent. It can be caused by illness, accident, or intellectual disability. It is not necessarily related to age.

Don't confuse physical health issues with legal incapacity: you can have physical health problems and still be perfectly able to make your own decisions.





It is important to make a protection mandate while you still have your decision-making abilities. Don't wait until it's too late!



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.

Powers of Attorney, Protection Mandates, and Wills: What Are the Differences?

Power of Attorney	Protection Mandate	Will
<p>You can name one or more people to act on your behalf to:</p> <ul style="list-style-type: none"> manage your finances or your property 	<p>You can name one or more people to act on your behalf to:</p> <ul style="list-style-type: none"> manage your finances or your property take care of you or your children under 18 	<p>You can name the people who you want to:</p> <ul style="list-style-type: none"> inherit your money or your property take care of your children under 18 settle your affairs
<p>In what situation?</p>		
 <p>While you are alive and can make decisions.</p>	 <p>While you are alive but incapacitated.</p>	 <p>When you die.</p>
<p>Why?</p>		
<p>Because you're going on a trip, you're too busy, or your affairs are complicated, etc.</p>	<p>To choose someone to make decisions for you if you become unable to make them yourself.</p>	<p>So that your wishes will be respected after your death.</p>
<p>When can you make them?</p>		
<p>While you still have all your decision-making abilities.</p>		<p>Don't wait until it's too late!</p>

Instructions to Include in Your Protection Mandate

You can give instructions about your property and your well-being. Here are examples of instructions you can include:

Instructions about property:

- administer your income, such as your retirement pension, disability pension, or social assistance (welfare) benefits
- pay your bills, such as housing, electricity, taxes, and credit cards
- manage your assets, such as make investments or renovate or sell a building
- recover any debts that someone owes you
- take legal action in your name for issues related to your property

Instructions about your well-being:

- make decisions about your housing, such as a preference to live at home as long as possible instead of moving into a long-term care home
- make sure your personal needs are met (clothing, personal hygiene products, etc.)
- make sure you can enjoy leisure activities
- consent to your health care (even if you may still retain some autonomy in this regard)
- take legal action in your name for issues that affect you

Important! Making [advance medical directives](#) is another way to express your wishes in advance about health care you want or don't want. If you've prepared advance medical directives and you are in one of the situations in which they apply, they will take priority over your protection mandate.

In your protection mandate, you can also:

- plan to pay a salary to the person who will make decisions for you (your “mandatary”) and name one or several replacements
- name a tutor (guardian) to take care of your minor children if the other parent cannot

Put Some Safeguards in Place

The person who will make decisions for you (your “mandatary”) will have to do certain things to show that they are acting in your best interests. For example, your mandatary will need to report to a trusted person on how your property is being managed.

As a result, you should name who your mandatary should report to in your protection mandate.

For more protection, you can also require that your mandatary:

- get the agreement of one or more people to sell specific property, such as your house
- have your incapacity re-evaluated on a regular basis



Instructions

- _____
- _____
- _____

Who Can You Name?

The person you choose to make decisions for you if you can no longer do take care of yourself or your finances is called a “mandatary.” The person you name must be an adult (18 and over) who is willing and able to take on the responsibility. It’s a good idea to talk to your mandatary about the instructions in your protection mandate.



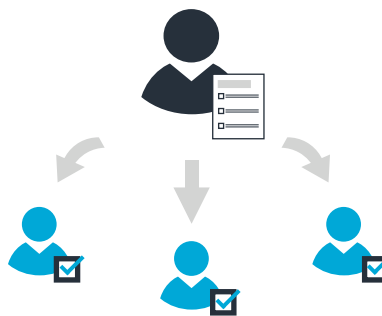
The person caring for your well-being can be a member of the family, a friend, or someone else you trust, but it must be a physical person.

For money and property, it can be a physical person or a company legally allowed to take on this role, such as a trust company.

Of course, it is important to name trustworthy people.

You can name one person to do everything, or one person for your well-being (health, food, housing, etc.) and another for your money and property.

You can also name several people to share the responsibilities together. But naming people with overlapping responsibilities can lead to difficulties if they don’t agree. It’s a good idea to make rules for decision-making to avoid conflict.



How to Make One

The two ways to make a protection mandate are by a notary or in front of two witnesses.

Notarized Mandate

A notary can prepare a protection mandate. The notary can give you personalized legal advice and make sure that the protection mandate respects the law. The notary makes sure that you understand your protection mandate and it respects your wishes.

You can give a copy to the person or people you named as your mandataries. However, they will need the original copy to activate it.

The notary keeps the original copy and then records it in the Registers of Testamentary Dispositions and Mandates of the Chambre des notaires (notaries' professional order).

An uncomplicated notarized mandate costs a couple of hundred of dollars. The fees may depend on how complex your situation is, among other things. A more complicated one can cost more.



Mandate in Front of Two Witnesses

This kind of mandate can be written by you, a lawyer, or someone else. To help you, the Curateur public du Québec (public curator) has created a free form with instructions. See the Resources section at the end of this guide.

After writing this mandate, you must sign it in front of two witnesses. The witnesses sign it at this point too. The witnesses must be able to confirm that you understand what you are doing. The witnesses can be friends, family members, or even professionals, but witnesses don't need to have any official position or title.

Be careful! The witnesses can't be named in the protection mandate to take care of you or your property. They can't be named to watch over your mandataries either.

Your witnesses don't need to know what your mandate says.

It's a good idea to give a copy to the people you name. Also, to activate the mandate, they will need the original, so tell them where to find it.



Updating a Mandate

You can change your mind and update your protection mandate if you are not incapacitated. You must update it in one of the two possible ways of making one: by a notary or in front of two witnesses. Or, you can make a completely new one.

After you change your mandate, destroy all available copies of your old protection mandate and tell your mandatary and your loved ones. Your new protection mandate will be the one that will be respected. If you use a notary or a lawyer, the new mandate will be registered in the appropriate registry.

Update your protection mandate every two to five years or when an important change happens in your life (death of your mandatary, important purchase, etc.). This makes sure that it still reflects your needs and your wishes.

Is the protection mandate you made before November 1st, 2022 still valid?

Many changes related to the protection of vulnerable people came into force on November 1, 2022. In principle, protection mandates made before this date are still valid; you do not have to modify them.

However, you may choose to amend your protection mandate to benefit from the new protections in place. For example, mandataries must now report to a trusted person. If your protection mandate does not include this measure, you can amend it to add it.



Activating a Mandate (Homologation)

A protection mandate can't be used just because it exists. It must be legally activated. This activation process is called "homologation." The protection mandate cannot be used until this process has been completed.

Homologation is a safeguard to make sure that you no longer have the ability to make decisions for yourself and that using the protection mandate is in your best interests. This process can take several months. The person or people named in your protection mandate undertake the homologation process.

Evaluations by a doctor and a social worker are required to homologate the protection mandate. These evaluations confirm whether you are no longer able to make decisions yourself. You will also have an opportunity to be heard.

The court will then decide whether your protection mandate should be homologated. The court can also suggest other ways to protect you depending on your degree of independence.



A Note About Fees

There are court fees to pay for homologation, plus fees of a lawyer or notary if you use their services. If the people requesting homologation had to pay these fees, they are usually entitled to reimbursement from the money of the person who made the mandate.

To learn more, see our guide “Homologation : **Using a Protection Mandate**” available at educaloi.qc.ca/seniors.

While Waiting for Homologation

The homologation process can take several months. In the meantime, the law allows your loved ones to take care of you in some situations.

Emergencies. The law allows your loved ones to make decisions in an emergency. For example, they could repair a leaking roof or pay important bills.

Government programs. For some government programs, your loved ones can collect and manage your benefits.

Medical decisions. The law allows some people, such as a spouse or close relative, to make decisions about the health of someone who can no longer make decisions.

Power of attorney. Normally, power of attorney is no longer valid once you become incapacitated. However, if you made a power of attorney, it can be used until the protection mandate is homologated. During this time, the person named in the power of attorney can continue to act in your name.

Responsibilities of People Named

Your mandatary must follow the instructions in the protection mandate and the court decision. This means that they must :

- look after the person's physical and psychological well-being (proper housing, food, clothing, medical care, etc.)
- carefully manage the person's property and other financial affairs

Your mandatary must also make all of their decisions in your interest while respecting your rights and autonomy.

To achieve these objectives, your mandatary must:

- Prepare an inventory (list) of your property within 60 days after the mandate is homologated (made official).
- Provide reports to someone you trust, according to the timeline provided in the mandate, or at least every three years, concerning the management of your property. This is called "rendering account."

Careful! If the protection mandate was made before November 1, 2022, your mandatary is not required to provide reports unless it is specifically provided for in the mandate.

In Case of Problems

Anyone can contact the public curator to report problems of mistreatment of a vulnerable person. It is also possible to file a report if the mandatory is not following the instructions in the protection mandate. The public curator can investigate and act. You can report situations confidentially. Contact information for the public curator is at the end of this guide.

If the person acting under a protection mandate is not doing a proper job, a person who is concerned about your well-being can ask the court to put an end to the protection mandate. The person appointed as “replacement mandatory” can even ask the court to take the current mandatory’s place. If no replacement is named in the mandate, the court can protect you in other ways, for example by establishing a tutorship.



If You Don't Have a Protection Mandate

If you become incapacitated and don't have this kind of mandate, the law fills some gaps to protect you.

Here are some examples:

Medical decisions. The law allows some people, such as a spouse or close relative, to make decisions about your health if you can no longer make decisions.

Government programs. For some government programs, your loved ones can collect and manage your benefits.

Spouses who are married or in a civil union. Your spouse can continue to take care of basic family needs, such as electricity bills, heating, housing, and groceries. But the law doesn't give any powers to common-law partners even if you've been living together for several years.

Tutorship. You, or someone close to you (spouse, family member, friend, or other relative) can ask the court or a notary to establish a tutorship in your favour.

If there is no one who can take on the role, the public curator will do it. But this only happens as a last resort.

The public curator is both a person named by the government and an agency. Among other things, the curator protects the rights of incapacitated people who have no one to act for them.

Note: If a person in a health or social services institution is isolated and in need of protection, the institution can take steps to request that protection be put in place.

For more information about protection mandates and the law

Éducaloi

educaloi.qc.ca/en

educaloi.qc.ca/seniors

Curateur public du Québec (public curator)

www.quebec.ca/en/government/departments-and-agencies/curateur-public

1-844-532-8728

Chambre des notaires du Québec (notaries' professional order)

www.cnq.org/en/

Sample Interactive Protection Mandate from the Public Curator

Curateur public du Québec (public curator)

www.quebec.ca/en/justice-and-civil-status/legal-protection/protection-mandate/drawing-up-your-protection-mandate

Find a Notary

Chambre des notaires du Québec (notaries' association)

trouverunnotaire.cnq.org/en/find-a-notary.html

You can search by language, region, accessibility for people with reduced mobility, and notaries who accept legal aid.

Find a Lawyer

Barreau du Québec (Quebec bar)

www.barreau.qc.ca/en/find-lawyer/

For a free or low-cost consultation

- Montreal: 514-866-2490
60 minutes for \$60
- Longueuil: 450-468-2609
30 minutes for \$50
- Quebec City, Beauce and Montmagny: 418-529-0301
60 minutes for \$60

Juris Référence

www.jurisreference.ca/en

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Free and Low-Cost Legal Services

La boussole juridique

boussolejuridique.ca/en/

List of legal services in Quebec. Search by region and area of law.

Community Justice Centres (Centres de justice de proximité):

www.justicedeproximite.qc.ca/en

Get legal information in person and sometimes by phone.

Access to Justice Resources Compiled by the Barreau du Québec

www.barreau.qc.ca/en/doing-business-with-lawyer/access-justice-resources/

Éducaloi explains the law to Quebecers in everyday language.



Read about these and other topics at www.educaloi.qc.ca:

- Wills
- Estates
- Planning ahead
- Housing for seniors
- Preventing fraud, exploitation and abuse
- Health care decisions
- Protections for people with loss of autonomy



Print guides and pamphlets

Éducaloi has a selection of print guides and pamphlets. To order, go to the “Order Éducaloi’s Products” page on our website.

Practical tools for seniors

All our information tools for seniors, including these, are available for free online. Please visit educaloi.qc.ca/seniors to download them.



INFORMATION EMPOWERS