

Protection Mandates

Naming Someone to Act for You



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Important Notice!

The legal information in this guide is up to date to November 11, 2019. It applies only in Quebec and is not meant as legal advice. If you need advice on a specific situation, consult a legal professional.

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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 finances if you can't do this yourself. You can also name more than one person to do this.

The law calls the inability to act for yourself “incapacity.”

Incapacity can be temporary or permanent. It can be caused by illness, accident or serious 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.

A protection mandate must be activated before it can be used. (See the section [Activating a Protection Mandate](#).)

Here are examples of what you can put in a protection mandate:

- your wishes about living arrangements and health care
- instructions on managing your finances
- give permission to sell your property and set rules for sales
- give a salary to the person acting for you (A salary is not required, but the person must be reimbursed for expenses.)
- name replacements in case the people you name can't take on the role or resign

Note: Protection mandates used to be called mandates in case of incapacity. The name has changed, but the rules are basically still the same.

When to Make One

You must make a protection mandate while you are able to make your own decisions and act in your best interests.

Some people call this being of “sound mind.” It means you understand the document you are signing and the impact of signing it.

Who Can You Name?

The person you name must be an adult (18 and over) willing and able to take on the responsibility.

The person you named is called a "mandatary."

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.

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.

How to Make One

There are two ways:

1. Notarized

This kind is prepared by a legal professional called a notary.

You have to pay the notary's fees, but you will get advice at the same time.

The notary must make sure you fully understand the document and that it reflects your wishes. In some cases, notaries request a medical certificate to confirm a person's mental capacity.

The notary keeps the original and registers one in the registry (list) of mandates of the *Chambre des notaires du Québec* (professional order of notaries).

When this guide was printed, an uncomplicated notarized mandate cost roughly \$300. But notaries are free to set their own fees.

2. In Front of Witnesses

This kind of mandate can be written by you, a lawyer or someone else.

You can also use a form. A Quebec government agency called the public curator has a free form with explanations. The Useful Resources section at the end of this guide says where to find the form.

This kind of mandate must be signed by you and two witnesses. The witnesses must be able to confirm that you understand what you are doing. But they don't need to know what the mandate says.

People named in the mandate to act for you, or replacements for them, can't act as witnesses. Neither can someone to whom these people must report. The witnesses can be friends, family members or even professionals, but witnesses don't need to have any official position or title.

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.

Activating a Mandate

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.

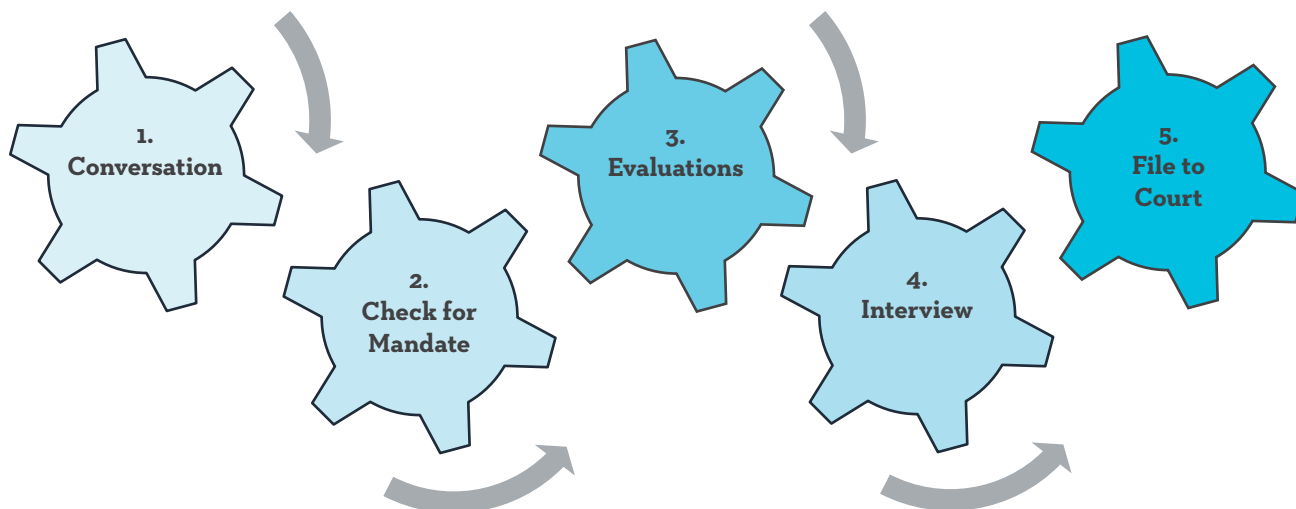
Homologation involves many steps. On the next page, we only describe the main ones. The purpose of the steps is to protect the vulnerable person.

It is hard to give an exact time frame, but homologation can take several months.

The person or people named in the mandate - the mandataries - must take care of homologation. They can do the process alone or ask a notary or lawyer to do it.

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.





Steps

1. A Conversation

If you think someone is becoming or is incapacitated, it can be a good idea to have a discussion with this person and those around the person about steps to take.

For example, you might decide to have the person evaluated by a doctor. This can help you to understand the person's condition and level of autonomy.

2. Check for Mandate

Start by looking through personal papers.

If you don't find one, make requests to search two registries (lists):

- the registry of notarized mandates of the *Chambre des notaires* (professional order of notaries)
- the registry of the Quebec Bar for a mandate made by a lawyer

See the Useful Resources section at the end of this guide for contact information for the registries.

Note: Only certain people can request registry searches. They include a notary or lawyer, a person named in a mandate (a "mandatary"), and other people who swear in writing that they have a legitimate interest in the incapacitated person and submit medical and psychosocial evaluations of the person. These evaluations are discussed below.

3. Professional Evaluations

There must be two evaluations of the person. The first is a medical one by a doctor. The second is a “psychosocial” one, usually by a social worker.

The website of the public curator has forms in English for the evaluations: www.curateur.gouv.qc.ca/cura/en/reseau-sante/formulaires.html.

Medical Evaluation

To find a doctor, family members should contact the family doctor of the person involved or the health care institution closest to where the person lives.

Psychosocial Evaluation

A "psychosocial" evaluation deals with the person's overall situation. For example, here are some elements covered:

- living environment, family dynamics and social network
- level of independence (how well the person functions on a daily basis)
- ways to protect the vulnerable person other than activating the mandate
- whether the person wants the mandate to be activated

Often the doctor who does the medical evaluation can help with finding a social worker.

Otherwise, a CLSC can help find a social worker. You can also pay for a private evaluation by a social worker.

If the person is not living at home (is hospitalized or in long-term care, for example), the professionals of the place in question take care of the two evaluations.

4. Interview of the Vulnerable Person

This person is interviewed during the process, unless this is impossible for health reasons. This person also has a right to challenge the homologation request. If it is challenged, that person or a representative of the person will be heard by a court.

5. Presentation of File to the Court

The evaluations and other documents are presented to the court for a decision about whether to activate the mandate. In order to activate the mandate, the court must conclude that the person is legally incapacitated and needs protection.

What Happens Before It Is Activated?

The law fills some gaps. Here are examples:

- People close to the vulnerable person can take care of urgent matters. For example, they can fix a leaking roof or pay important bills.
- For certain government programs, people close to the vulnerable person can collect and manage benefits for that person.
- The law says who can make medical decisions for the vulnerable person if that person can't make decisions alone.
- A court can temporarily name someone to take care of the vulnerable person.
- If the vulnerable person gave a power of attorney to someone, that power of attorney can be used until the mandate is homologated. To learn about powers of attorney, see page 10 of this guide.



Responsibilities of People Named

They must follow instructions in the mandate and in the court decision that activates it.

They also have general duties. Here are examples:

- 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
- generally act in the person's best interests
- prepare a report each year on what they have done

If You Don't Have One?

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

Here are some examples:

- The law names people who can make medical decisions for you.
- For certain government programs, people close to you can collect and manage benefits on your behalf.
- Married and civil union spouses can continue to take care of basic family needs for their spouses: electricity bills, heating, housing, groceries, etc. (The law is silent on unmarried couples.)

But if your affairs are complicated to manage or you need protection because you don't have a support network, a court can appoint someone to take care of you. This is known as "opening protective supervision".

This request can be made by someone in your circle of family and friends, or a Quebec-government agency called the public curator (Curateur public). A lawyer or notary can help with the request.

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.

Protection Mandates Versus Powers of Attorney

Important! A power of attorney and a protection mandate are different.

A power of attorney lets someone act for you even though you are still capable of making your own decisions. You use a power of attorney to help you get things done.

A protection mandate names someone to act for you if you become legally incapacitated.

Here is another difference: a power of attorney only applies to property and finances. A protection mandate is broader: it can cover property, finances, health, housing, etc.

Once you are found to be legally incapacitated, a power of attorney is no longer valid.

In certain specific situations, a power of attorney and a protection mandate might be in the same document.

To learn more about powers of attorney, see Éducaloi's print guide or website articles on the topic.

Updating a Mandate

If you have a protection mandate, it is a good idea to look at it every few years to make sure it still reflects your wishes and life situation.

You should also check that the person or people you named can still take on the responsibility.

In Case of Problems

If the person acting under a protection mandate is not doing a proper job, a request can be made to a court to replace this person. If no replacement is named in the mandate, the court can open protective supervision (see above) and name a private individual or the public curator to take care of the person.

Anyone can contact the public curator to report problems of mistreatment of a vulnerable person. 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.



A Note on Health Care Wishes

As noted above, a protection mandate can include wishes about health care you want, or don't want, in certain situations.

But there are other legal ways to indicate your wishes in advance. Like a mandate, they can also be used if you can't make your own decisions about health care.

Here are examples:

- advance medical directives
- a living will
- levels of medical intervention forms used by hospitals and other institutions
- organ donation instructions
- informal methods (a note, a video, orally telling people)

To learn more about these ways to express wishes in advance, see the Health section of Éducaloi's website.





Useful Resources

Note: For most websites listed, you can switch to English from the home page. When there is no English version, this is mentioned.

Éducaloi

www.educaloi.qc.ca

To order more copies of this guide or our other print products, go to "Contact Us" on our website home page and then to "Order Products." You can also write to us at the address on the back of this guide.

Find a Notary

Chambre des notaires du Québec (professional order for notaries):

www.cnq.org/fr/trouver-un-notaire.htm

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

Free, Bilingual Notary Information Line

1-800-668-2473

Service is available in English.

Find a Lawyer and Get a Free or Low-Cost Consultation

Bar of Quebec (professional order for lawyers):

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

Or call:

Island of Montreal: 514-866-2490 (first 60 minutes for \$60)

Longueuil: 450-468-2609 (first 30 minutes for \$50)

Quebec City, Beauce and Montmagny: 418-529-0301 (first 30 minutes for \$30)

Free and Low-Cost Legal Services (legal clinics, etc.)

Bar of Quebec list:

www.barreau.qc.ca

Switch to English. Locate "For the Public" in the middle of the page. Click on "Access to Justice" then "Pro bono or low cost services."

La boussole juridique

<http://votreboussolejuridique.ca>

Search for legal information and services by region of Quebec. (Website in French only)

Community Justice Centres (Centres de justice de proximité):

www.justicedeproximite.qc.ca

Legal information in person and sometimes by phone

Protection Mandate Registries

Registry the Chambre des notaires du Québec:
www.cnq.org/fr/mandat.html (Website in French only)

514-879-2906 or 1-800-340-4496

Registry of the Quebec Bar:
<http://www.barreau.qc.ca/en/public/testament-mandat/recherche/index.html>

514- 954-3411 or 1 800 361-8495, ext. 0

Public Curator of Quebec (Curateur public)

www.curateur.gouv.qc.ca

Information on the protection of vulnerable citizens, protection mandates, etc.

Public curator's form and guide to make a protection mandate:
https://www.curateur.gouv.qc.ca/cura/en/outils/publications/mon_mandat.html

Note that you can report cases of suspected abuse of incapacitated people to the public curator.

514-873-4074
1-800-3639-020

Commission des droits de la personne et des droits de la jeunesse (Quebec human rights commission)

www.cdpdj.qc.ca/en/Pages/default.aspx

514-873-5146
1-800-361-6477

The Commission has a special team that investigates cases of mistreatment of seniors and the disabled.



What Is Éducaloi?

Éducaloi explains the law to Quebecers in everyday language. We are an independent non-profit organization that was founded in 2000.

Éducaloi's activities focus on these areas:

- a legal information website: www.educaloi.qc.ca
- other legal information tools (pamphlets, guides, videos, etc.)
- educational resources for teenagers, adults and educators
- helping other organizations explain the law in accessible language



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By email: see the Contact Us section of our website: educaloi.qc.ca

Éducaloi explains the law to Quebecers in everyday language.



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- Wills
- Estates
- Planning ahead
- Housing issues for seniors
- Preventing fraud, exploitation and abuse
- Health care decisions
- Protections for vulnerable people



Print Guides and Pamphlets

To order print guides or pamphlets, go to the Contact Us section of our website.

Practical tools for seniors

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

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INFORMATION EMPOWERS