

## Financial decision making

### POWER OF ATTORNEY

By making a Power of Attorney, you determine who will have conduct of your financial affairs if you become sick, injured, or generally incapable to the point where you cannot communicate or manage your own affairs. Often, people appoint a spouse or other trusted family member to manage the many practical, financial tasks that arise; for example, bills must still be paid, bank deposits made, someone must handle insurance and benefits paperwork, or land must be sold.

Without a Power of Attorney, these assets are generally frozen and inaccessible to those trying to care for you.

A Power of Attorney may either be specific (for a particular task such as selling a piece of property) or general (a broad authorization for someone to conduct all of your affairs). Typically, a Power of Attorney should be “enduring” so that it is still effective even if you become mentally incapable.

## Medical & personal decision-making

### HOW ARE HEALTH CARE DECISIONS MADE FOR AN ADULT WHO IS INCAPABLE?

If an adult is “incapable” to the point of being unable to manage his/her own affairs, or to make decisions or give directions about personal care and health care, there is very little that can be done if the adult had not put planning in place before reaching that incapable stage.

### THE DEFAULT SITUATION: IF NO PRIOR PLANNING IS IN PLACE

If you have not put in place any legally valid planning prior to becoming incapacitated, health care providers may only provide major or minor health care to you if someone consents to it on your behalf. The law prescribes the “pecking order” of whom the doctors must look to, to find someone who will make medical decisions for you. The order begins with your spouse, adult children, parents, siblings, etc. Your temporary decision maker must comply with any wishes you expressed to him/her about your health care while you were capable.

### HOW TO HAVE A SAY IN YOUR PERSONAL AND HEALTH CARE

Often, people are not comfortable leaving the question of who will be the decision-maker to chance, or because they know they do not want the person listed on the “pecking order” list to make their medical decisions. There are 2 specific tools available to you to assist with this:

1. Advance Directive – set out your directions as to what medical care you do or do not want;
2. Representation Agreement – name a person (as well as an alternate/backup) who will be your decision-maker (your “Representative”), about personal care and medical care matters.

## Advance Directives

An Advance Directive allows you to state your wishes about what health care treatment you will refuse or accept (including life support or life-prolonging medical interventions) directly to a health care provider. It is legally binding on health care providers, as long as it meets with the formal requirements set out in the governing legislation.

This can be an especially valuable tool if you have strong feelings now about the care you know you

will/will not want in the future. For some clients, it is particularly useful in that no particular person is saddled with responsibility to dictate your treatment; rather, the directive speaks for itself. The Advance Directive can be used in addition to a Representation Agreement (see below), to remove discretion of your Representative such that the decisions he/she makes for you must comply with your Advance Directive.

The Advance Directive cannot be used to dictate what personal care you will receive (i.e., where/with whom you will live, your diet or dress, your personal safety, whom you may associate with etc.). A Representation Agreement, on the other hand, does cover personal care.

## Representation Agreements

Since 2000, adults have been able to make a Representation Agreement, which is the only legal way you can appoint someone to make health and personal care decisions for you and be your health care advocate.

There are many factors to consider when choosing who to involve in your Representation Agreement, such as: your trust in them, their skills and abilities, and their understanding of your wishes and values. You cannot appoint a person who is: 1) paid to provide personal care or health services to you; or 2) employed at a facility where you live or receive personal or health care services from.

Your Representative may make decisions about:

- Your personal care such as: where you live; your participation in social, education or other activities; whether you may have contact with or association with other person(s); diet and dress.
- Your medical care, such as: routine and minor health/dental matters; major surgical, medical, health or dental care matters; give consent or refuse consent to medical care (e.g. defibrillation, tube feeding, intravenous feeding, or connection to life support machineries).

In making decisions about your care, your Representative has an ongoing duty to determine your wishes and comply with these wishes, where reasonable.

As with a Will, you should review your incapacity planning documents periodically to ensure they still reflect your wishes.

For assistance with estate planning or administering an estate, contact a member of our experienced estate team at Fulton & Company LLP.



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