

Saskatchewan Power of Attorney Explained

What is A Power of Attorney?

A Power of Attorney (POA) is a legally drafted document with authorizes someone else to act on your behalf in legal, financial, property, and/or personal areas.

Who may serve as my Attorney?

An attorney is a legal representative and does not need to be a lawyer. The POA must be over 18, may not be going through bankruptcy and they must be clear of certain crimes for the last ten years. A Trust company can also serve as your Property Attorney (see below).

Can I appoint more than one POA?

While it depends on your situation, most people will want to appoint a spouse as a minimum measure. To go further, it's generally recommended to provide an alternative in case something happens to your spouse.

Your POA document(s) will specify how you would like your POAs to serve:

- **"Severally"**: This means that each person listed in the document can serve with a single signature. It's crucial that such persons listed communicate closely with each other and that they do not have competing interests.
- **"Successively"**: The first person listed serves. Only if the first person can't do it will the next become authorized to serve.
- **"Jointly"**: The POAs must decide and act together.

What types of POA are there in Saskatchewan?

The areas which POA make decision under are in the **Property** and **Personal** Areas:

PROPERTY: A POA for Property can arrange all of your financial affairs, including paying your Bills, getting your taxes done, representing your interests in court or in disputes, changing your land titles, or managing your investments. The only area of limitation is that of making testamentary dispositions. They cannot make or change a Will for you.

What qualities should I look for in my POA for Property?

- **Trustworthy**: These people should have an unblemished past when entrusted with others' things. They should not be desperate for money.

- **Capable:** The POA should know how to arrange their affairs. They should be good managers and able to get things done in our business world.
- **Accountable:** If there are other family members, they should be the type to share readily what they are up to. They should be happy to disclose any fees they might charge for doing their work.

PERSONAL: A POA for personal matters directs affairs which typically affect your living arrangements. They may help to decide where you should live, who should do your hair, who might assist with travel, etc. They do not make healthcare decisions and cannot arrange financial payments.

What qualities should I look for in my POA for Personal matters?

- **Attentive:** They will look out for your personal needs and make arrangements for your care and lifestyle needs.
- **Available:** Someone nearby is preferred to someone far away, other things being equal. You should know they want to come to help when called on.

Most POA documents name someone to serve as both Property and Personal POA. However, there are cases where someone may not be suitable to serve in both roles. For example, a grandchild might be appointed as someone who is attentive to personal needs, but does not have the skills to deal with financial matters. Meanwhile, a brother, or a Trust Company may be designated to take care of the finances.

When can my POA begin acting?

If you do not have any restrictions on the document, the POA can act as soon as the document is in their possession.

Some Grantors choose to restrict their POA to act only upon certain conditions:

- A POA may act only between certain dates.
- A POA may act only when the Grantor is pronounced incapable by two doctors.
- A POA may act only after receiving written authorization from the Grantor.

What is an "Enduring" POA?

An enduring POA is one that endures past a time when the Grantor becomes capable of handling their own affairs. It is not terminated by the Grantor becoming incapable. Most banks require that a POA be "enduring" to be registered on the account.

What are some ways of making my POA accountable?

By law, your POA is required to act in your best interest. However, it's a sad fact that many of the elderly are taken advantage of. It's also true that every POA who acts fraudulently was trusted by someone. Therefore, it's very important to ensure that the POA has accountability established upon acting. That accountability can take different forms:

Joint POA: You can name two or more POAs, whose names must all appear on signed documents. While this can be inconvenient in some circumstances, it is usually an excellent accountability arrangement.

Designated Persons for Accountability: If one child is named as POA, it's very common to give another child the right to ask for an accounting, and to require the POA to give a financial accounting to them if they charge for their work. Under the law a property attorney can collect a 2.5% fee of all money received and all money paid by the property attorney, while personal attorneys can receive \$15.00 per hour for the time spent on the grantor's personal affairs.

I am acting as Attorney. What must I do?

As POA, you are legally responsible to keep careful records, including the full statement of all assets at the beginning of the work. It's critical to track monthly cash flow details and all title transactions. Be sure that your expenses are noted and that all entries can be explained to family or beneficiaries in the Will. If you charge fees for your work, an annual accounting is the minimum requirement. Frequent communication with interested parties is in the best interest for all concerned.

In general, gifts are inappropriate and should not be made to any of the family or to the POA. If you are POA for a Grantor who was in the habit of giving gifts prior to incapacity, you may be in a position to gift similar amounts to charity. In addition the POA may be authorized by the Grantor to gift in the POA document. If the POA document is silent as to authorizing gifts, the absolute limit for gifting is \$1,000 per year.

Loans are as inappropriate as gifts.

The Grantor's executor has the right, and sometimes the responsibility, to ask for a full accounting from the POA. Where a POA is reluctant to provide information, the court may be called on to require it.



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For more help on the Accounting process see

<http://publications.gov.sk.ca/documents/9/81685-Accountings.pdf>.

What happens if I need a POA and haven't appointed one?

If you are capable, get it done. Any lawyer will draft it for you, and it will be accepted anywhere in Saskatchewan.

Mennonite Trust will draft a POA with a "Non-Lawyer Witness Certificate" as defined by Saskatchewan legislation. Most institutions see this as entirely adequate.

If you are incapable of making a POA, the court may appoint someone who applies on your behalf as Guardian. If there is no suitable person, the Public Guardian and Trustee, a government organization, becomes your Guardian.

Access to Relevant Documents

For More information, visit <http://www.publications.gov.sk.ca/details.cfm?p=1325>. You will find various helpful forms including the "Powers of Attorney Act, 2002", as well as "Regulations for Power of Attorney"

- FORM A Enduring Power of Attorney Appointing a Personal Attorney
- FORM B Enduring Power of Attorney Appointing a Property Attorney
- FORM C Enduring Power of Attorney Appointing a Personal and Property Attorney
- FORM D Legal Advice and Witness Certificate
- FORM E Non-lawyer Witness Certificate
- FORM F Acknowledgement and Consent
- FORM G Declaration of Occurrence of Contingency
- FORM H Accounting by a Property Attorney
- FORM I Accounting by a Personal Attorney
- FORM J Revocation of Enduring Power of Attorney
- FORM K Final Accounting by a Property Attorney
- FORM L Final Accounting by a Personal Attorney