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# Powers of Attorney

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10 Essentials You Need to Know

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## About Edward Olkovich

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**Edward Olkovich**

Ed is recognized as a leading Canadian estate expert. He has practised law in his own firm since 1978 and is a Certified Specialist in Trusts and Estates Law.

Ed is also the author of seven books, including *Choosing Executors*, *Breakthrough Estate Planning* and *Estate to the Heart: How to Plan Wills and Estates for Your Loved Ones*.

He is regularly quoted in national publications as an expert in estates and is a frequent guest on television and radio. As a lawyer, Ed advises clients on wills, estates, executors, estate administration, and handles legal challenges to wills.

Ed is a member of the Ontario Law Society of Upper Canada, Ontario Bar Association, American Bar Association, Society of Trust and Estate Practitioners (STEP), Canadian Association of Professional Speakers (CAPS), and National Speakers Association (NSA).

He is the founder of EstateTherapy.com, an online estate planning publisher, and is the Dean of Executor Academy.

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## Powers of Attorney are Legal Documents

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You sign powers of attorney (POAs) to designate a person as your agent. In Ontario, there are two kinds of powers of attorney.

Powers of attorney name someone to handle your property or health care decisions.

## Ten Essentials about POAs for property You Need to Know

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1. **Capable** -- only when you are capable can you sign a POA to make financial decisions
2. **Without a POA** -- a relative, friend or the Public Guardian and Trustee must apply to be appointed by a court to be your legal guardian of property. This is a costly, complex and time consuming process
3. **Attorneys** -- can be anyone over 18, does not have to be a lawyer
4. **Qualified witnesses** for POAs cannot be:
  - under 18 years of age or have a guardian
  - your attorney, your attorney's spouse or partner
  - your spouse, partner or child (Spouse includes same-sex, married or common-law partner for at least a year or if a child is born)
5. **Incapable** -- means you cannot understand information about your finances or property, or appreciate the consequences of making or not making financial decisions
6. **Attorney's powers** -- are unlimited, unless restrictions are contained in the POA document. Attorneys cannot change wills.
7. **Attorneys can be paid** -- for their services. Attorneys may not, however, profit from their position, make or change your will or transfer their authority to someone else.
8. **Revocation** -- you can cancel the POA at any time if you are still capable
9. **Attorneys are in a position of trust** -- and owe a duty of loyalty. They can be held accountable and must keep records.
10. **Avoid DIY POAs** -- and be extra careful with homemade or do-it-yourself POAs. Wherever possible, avoid using a POA unless prepared by a lawyer.

## Powers of Attorney for Property: Tips to Remember

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- Don't name someone who will not accept the responsibility of being an attorney.
- Get the consent of the person you choose to name as your attorney. Always name a backup attorney.
- The qualities you need in an attorney are quite similar to the ones you need in your executor.
- POAs are legal documents. This means they can be interpreted by a judge. Their wording is important and their validity can be challenged in court.
- POAs for property are like loaded guns; once signed, they can be used immediately unless they contain restrictions.

## Reminder

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This report is no substitute for legal advice.

If you are interested in a consultation with Edward Olkovich, contact his office through his web site at [MrWills.com](http://MrWills.com) or by telephone at 416.769.9800 or Toll Free at 1.877.Mr Wills (1.877.679.4557).

### Want more information?

Contact **Edward Olkovich Law Professional Corporation** at [MrWills.com](http://MrWills.com) for a consultation to review your needs.

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