

Powers of Attorney

10 Essentials You Need to Know

Edward Olkovich

About 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 has spoken to audiences across Canada and is a frequent guest on television and radio. As a lawyer, Ed advises clients on wills, estates, executors, and 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. Ed can be reached by e-mail at ed@mrwills.com or by telephone at 416-769-9800 or toll free at 1-877-MrWills.

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A handwritten signature in black ink, appearing to be 'Ed' with a stylized flourish.

Edward Olkovich, B.A., LL.B., C.S., TEP

Powers of Attorney Are Legal Documents

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 your health-care decisions.

Ten Essentials About POAs for Property That You Need to Know

- 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; do not have to be a lawyer.
- 4. Qualified witnesses for POAs cannot be:**
 - under 18 years of age or have a guardian
 - your attorney or 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 it is prepared by a lawyer.

Powers of Attorney for Property: Tips to Remember

- 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

Want more information?

Are you interested in a consultation with Edward Olkovich? Contact him at ed@mrwills.com.
By telephone at 416.769.9800 or, toll free at 1.877.Mr Wills (1.877.679.4557).

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