

# FOR ALL CLIENTS WITHOUT CAPACITY FOR CARE-WORKER PROFESSIONAL USE

CAN INCLUDE: ANY FORM OF DEMENTIA/ALZHEIMERS, BRAIN DAMAGE, DEVELOPMENTAL DISABILITY ETC.

## 1) Does the incapable adult have a valid POA of Personal Care?

Y or N

If no, does the incapable adult have a substitute decision maker (SDM)? In Ontario, a SDM is able to make "medical treatment decisions" when required, if the adult requiring the decision to be made, does not have a valid POA of Personal Care in place. The SDM can be any of the following highest ranked family members:

1. spouse or partner (if no, proceed to #2)
2. child or parent (if no #1 or no #2, proceed to #3)
3. brother or sister (if no #1, no #2, no #3, proceed to #4)
4. any other relative by blood, marriage or adoption

In order to be considered legally "mentally capable" to create a POA of Personal Care, the adult must:

- understand whether or not the person they are naming to make decisions for them are truly concerned about how they live and how they are taken care of; and
- understand that they may need this person one day to make personal care decisions for them

**If you feel this adult is "mentally capable to create a POA of Personal Care based on the above criteria, please advise for them to do so by contacting a lawyer of their choice. If not, please note who is the SDM.**

## 2) Does the incapable adult have a valid POA of Property?

Y or N

In order to be considered legally "mentally capable" to create a POA of Property, the adult must:

- Know what property they have and approximately what it is worth;
- know if someone depends on them financially and what they provide for them;
- understand that they are able to revoke/cancel the POA of Property as long as they are "mentally capable" to do so;
- understand the "power" they are giving to their POA of Property (the authorities such as: banking; purchasing goods/services, buying selling real estate, maintaining and selling property/vehicles, and MORE); and
- understand the risks associated with giving these authorities to someone. (ie: risks- such as losing their money, property, etc.)

**If you feel this adult is "mentally capable" to create a POA of Property based on the above criteria, please advise for them to do so by contacting a lawyer of their choice.**

**If you feel this adult is NOT "mentally capable" to create a POA of Property based on the above criteria, please advise them to research Adult Guardianship.** For most caregivers/SDM's Guardianship of Property is needed and will save the caregiver/SDM much unnecessary hardship while managing their loved one's property. "Property in this context not only means real-estate, but it also managing the incapable adult's bills, belongings, bank accounts, taxes, etc. It contains many required, daily tasks the incapable adult cannot manage. NOTE: If the incapable adult will be admitted to LTC, POA of Property or Guardian of Property is required to apply for government of Ontario's Long-Term Care Home Rate Reduction Program.

## **WHEN CREATING POWERS OF ATTORNEY ARE NO LONGER AN OPTION, ADULT GUARDIANSHIP MAY BE THE SOLUTION.**

ADULT GUARDIANSHIP IS WHEN SOMEONE STEPS IN, OF THEIR OWN VOLITION, AND IS APPOINTED BY THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE, OR APPOINTED BY A JUDGE IN COURT, TO MAKE DECISIONS FOR AN ADULT THAT IS NOT CAPABLE.



**For Assistance\* on How to Apply to Become a GUARDIAN OF PROPERTY \*Ontario Residents Only**  
**Contact RACHEL MERUCCI by phone 519-777-9303, by Email [INFO@TBHLEGAL.CA](mailto:INFO@TBHLEGAL.CA) or visit [www.tbhlegal.ca/adultguardianship](http://www.tbhlegal.ca/adultguardianship) | FREE ADULT GUARDIANSHIP WEBINARS**

# KEY FACTS TO REMEMBER REGARDING ADULT GUARDIANSHIP

Adult Guardianship is a way of protecting a vulnerable person, such as someone with dementia or a developmental disability.

There is NO default Guardian of Property like there is for "Personal Care". No one- not even a parent or a spouse, has the legal authority to access their loved one's property, bank accounts etc. should the need arise, without documentation of a POA of Property or Guardianship of Property.

If your loved one has "property" that needs managing, someone needs to take on that role.

"Property" in this context means not only real estate, but also managing the incapable adult's bills, belongings, bank accounts, taxes... etc. It contains many routine, daily tasks the incapable adult can not manage.

**Without a Guardian of Property, the incapable person might face challenges such as:**

- **they do not have a bank account, or they have forgotten how to use it**
- **they are unable to submit their taxes**
- **they are unable to apply for ODSP or DSO/Passport Funding on their own**
- **they are not able to contribute to their RDSP**
- **they are not able to pay for the support they require such as PSWs**
- **they are not paying utilities and therefore risk losing heat, water, etc.**
- **they are vulnerable to financial exploitation from strangers or other relatives**
- **they are over-spending, or under-spending because they may not comprehend how to budget accordingly**
- **they are not able to arrange maintenance on their home**
- **they are unable to pay for services to their home such as pest extermination, cleaning services, or snow removal**
- **they may not notice or even care that a service to their home is needed**

## **There are Two Ways to Become Someone's "Guardian"**

1) Through a judge in court. Any type of Guardianship can be achieved through a judge in court. NOTE: Going to court is the only way someone can be awarded Guardianship of both Property and Personal Care together (aka: Guardian of the "Person") and also the only way to obtain just Guardianship of Personal Care. (You will very likely need a lawyer who specializes in this area to help you- it is difficult to do this on your own)

2) The second way to be appointed Guardian of Property is by applying for Statutory Guardianship of Property through the Office of the Public Guardian and Trustee (PGT.) This process is to obtain Statutory Guardianship of Property ONLY. This process is NOT applicable to obtain Guardianship of Personal Care, or Guardianship of the Person which can only be obtained through a judge in court.

Note: It is possible to become someone's Guardian of Property without becoming their Guardian of Personal Care and visa versa.

For most care givers, Guardianship of Property is all that is needed.



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