

Powers of Attorney

If you were in an accident that left you unable to manage your financial affairs, do you have someone you trust who could manage your affairs? Have you appointed that person to be your “attorney” under a power of attorney document? If not, you may be surprised to learn that person will be unable to assist you in any significant way. For example, that person would not be able to cancel your car insurance, use the money in your bank account to pay your bills, rent out your property on your behalf or sell your assets to help fund your expenses.

A power of attorney, created under the *Power of Attorney Act*, R.S.B.C. 1996, c. 370, is a document by which a person, the “donor”, may appoint another person (or corporation) to act as their “attorney” to deal with their financial and legal affairs. A power of attorney grants very broad discretion on the attorney and is, therefore, an extremely powerful document. For this reason, it is vital that the person appointed to act as attorney be a trusted and financially responsible individual.

Can my attorney make medical decisions for me?

Powers of attorney are limited to financial and legal decision making and do not authorize the attorney to make medical decisions for you. If you would like to appoint another person to make medical decisions on your behalf, you may do so by appointing a representative under a Representation Agreement for Health Care.

Can I restrict the scope of a power of attorney?

The powers conferred by a power of attorney may be either general or specific. A general power of attorney gives the attorney power to do everything on behalf of the donor that the donor can do by attorney. A specific power of attorney can empower the attorney only with respect to certain assets or transactions.

There are several limitations on an attorney’s authority to act. For example, an attorney cannot change or revoke a will on behalf of the donor, act in a situation where the interests of the attorney conflict with those of the donor, or revoke or change a beneficiary designation on a life insurance policy or RRSP.

Can I revoke a power of attorney?

A donor of a power of attorney may remove an attorney by revoking the power, so long as the donor is mentally competent. A power of attorney will also end, automatically, when the donor dies, becomes bankrupt or becomes mentally incompetent (unless it is an enduring power of attorney). A power of attorney can also be terminated by court order.

What is an “enduring” power of attorney?

In order for a power of attorney to remain valid after the donor becomes incompetent, it is necessary to execute an “enduring” power of attorney. An enduring power of attorney will allow the person appointed as attorney to continue to make financial and legal decisions for the donor after the donor becomes mentally incompetent.

If a person did not have an enduring power of attorney and became mentally incompetent, it would be necessary for an application to the court to be made in order to appoint a “committee” to manage his or her financial affairs – a process which is both time consuming and expensive. In order to avoid this consequence, virtually all powers of attorney are enduring.

What if I have assets in another jurisdiction?

The form and formalities of powers of attorneys vary from jurisdiction to jurisdiction (including province to province). Accordingly, if a donor owns assets in another jurisdiction, it is important to make appropriate inquiries in the other jurisdiction to confirm that the power of attorney will be sufficient to enable the attorney to deal with such assets. This is especially important where the donor owns real property situated in another jurisdiction.

If, on inquiry, it is discovered that the power of attorney as drafted will not be sufficient to allow the attorney to deal with the assets, one solution is to grant another power of attorney which complies with the laws of the other jurisdiction. Special care must be taken in granting a new power of attorney, to avoid revoking the old power of attorney.

Our Recommendation

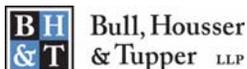
If you are an adult who lives or owns property in British Columbia, you should consider granting an enduring power of attorney to one or more persons you trust to ensure that, if you become incapable, your financial affairs will be properly managed for the benefit of you and your family.

Contributing Writer:

Emma McArthur

Associate

Tax, Trusts & Estates



Editor:

Andrew Hoffman, CFA

Portfolio Manager

Leith Wheeler Investment Counsel Ltd. (“Leith Wheeler”) is an employee owned firm providing portfolio management services for individuals, pensions and foundations.

Views expressed are the views of the contributing writer and do not represent the views necessarily of Leith Wheeler, and do not in any event constitute legal or other advice. There are no financial or other referral arrangements with the contributing writer or with the company with which the contributing writer is employed.

Coming Soon: Tax Free Savings Account (TFSA)

Starting in 2009, Canadians over the age of 18 will be able to open and invest up to \$5,000 per year in a *Tax Free Savings Account* (TFSA).

Like RSP accounts:

- You will benefit from tax sheltered growth of investment earnings
- Unused contributions will be carried forward to future years

Unlike RSP accounts:

- You will not receive a tax credit for your contribution
- You will be able to take money out of the TFSA without tax implications
- Any amounts you withdraw can be re-contributed to the TFSA at a later date

More information will be available in late 2008. Contact your Leith Wheeler Portfolio Manager or Advisor for more information.