

1979

## c 107 The Powers of Attorney Act, 1979

Ontario

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## CHAPTER 107

## The Powers of Attorney Act, 1979

*Assented to December 20th, 1979*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

(a) "attorney" means the donee of a power of attorney or where a power of attorney is given to two or more persons, whether jointly or severally or both, means any one or more of such persons;

(b) "legal incapacity" means mental infirmity of such a nature as would, but for this Act, invalidate or terminate a power of attorney and "legal capacity" has a corresponding meaning.

**2.** A general power of attorney may be in Form 1 and is sufficient authority for the donee of the power or, where there is more than one donee, for the donees acting jointly or acting jointly and severally, as the case may be, to do on behalf of the donor anything that the donor can lawfully do by an attorney, subject to such conditions and restrictions, if any, as are contained therein.

Form of  
general  
power of  
attorney

**3.—(1)** Where a power of attorney is terminated, any subsequent exercise of the power by the attorney is valid and binding as between the donor or the estate of the donor and any person, including the attorney, who acted in good faith and without knowledge of the termination.

Exercise of  
power after  
termination

(2) Where money is paid in the exercise of a power of attorney to which subsection 1 applies, nothing in subsection 1 affects the right of any person entitled to the money against the person to whom the payment is made, and the person so entitled has the same remedy against the person to whom the payment is made as he would have had against the person making the payment.

Saving

## POWER OF ATTORNEY DURING LEGAL INCAPACITY

Application of  
ss. 5-10

4. Sections 5 to 10 apply notwithstanding any agreement or waiver to the contrary.

Powers of  
attorney  
exercisable  
while donor  
without  
capacity

5. A provision in a power of attorney expressly stating that it may be exercised during any subsequent legal incapacity of the donor is valid and effectual, subject to such conditions and restrictions, if any, as are contained therein and not inconsistent with this Act.

Execution

6. A power of attorney that contains a provision referred to in section 5 shall be executed in the presence of a witness who is not the attorney or the attorney's spouse.

Revocable

7. A power of attorney that contains a provision referred to in section 5 may be revoked by the donor at any time while he has legal capacity.

Effect of  
declaration  
of mental  
incompetency

8. A power of attorney that contains a provision referred to in section 5 becomes invalid and of no effect, notwithstanding such provision, where,

(a) an order has been made declaring the donor a mentally incompetent person and upon the appointment of a committee;

(b) an order has been made declaring the donor incapable of managing his affairs under section 39 of *The Mental Incompetency Act* and upon the appointment of a person having the powers of a committee;

(c) the Public Trustee becomes committee of the estate of the donor.

R.S.O. 1970,  
c. 271

Passing  
accounts

9.—(1) Where a power of attorney contains a provision referred to in section 5 and the donor subsequently is without legal capacity, any person having an interest in the estate of the donor or any other person permitted by the court may, during such incapacity, apply to the surrogate court in the county or district where the donor or the donee resides for an order requiring the attorney to pass his accounts for transactions involving an exercise of the power during the incapacity of the donor, and the court may order the attorney to pass such accounts or such part thereof as is provided in the order.

Procedure  
and effect

(2) Where an order is made under subsection 1, the attorney shall file his accounts in the office of the surrogate court and the proceedings and practice upon the passing of the accounts shall be the same and of the like effect as the passing of executors' or administrators' accounts in the surrogate court.

(3) The Public Trustee may apply under subsection 1 in the same manner as a person interested in the estate of the donor where it appears to him desirable to do so in the best interests of the donor or his estate.

Application  
by Public  
Trustee

**10.**—(1) Where a power of attorney contains a provision referred to in section 5 and the donor subsequently is without legal capacity, any person having an interest in the estate of the donor or any other person permitted by the court may, during such incapacity, apply to the surrogate court in the county or district where the donor or the donee resides for an order substituting another person for the attorney named in the power of attorney and the court may make the order or such other order as the court considers proper.

Substitution  
of attorney

(2) The substitution of another person for an attorney under subsection 1 shall have the like effect as the substitution of another person for a trustee under *The Trustee Act*.

Effect of  
substitution

R.S.O. 1970,  
c. 470

(3) The Public Trustee may apply under subsection 1 in the same manner as a person interested in the estate of the donor where it appears to him desirable to do so in the best interests of the donor or his estate.

Application by  
Public Trustee

(4) The attorney may apply under subsection 1 in the same manner as a person interested in the estate of the donor, on giving notice to the Public Trustee and to all persons having an interest in the estate of the donor.

Application  
by attorney

**11.**—(1) *The Powers of Attorney Act*, being chapter 357 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,  
c. 375,  
repealed

(2) Notwithstanding subsection 1, *The Powers of Attorney Act* continues to apply in respect of powers of attorney executed before this Act comes into force.

Exception

**12.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**13.** This Act may be cited as *The Powers of Attorney Act*, 1979.

Short title

Form 1

Form of Power of Attorney

THIS GENERAL POWER OF ATTORNEY is given on ..... 19...  
(Date)

by ..... of .....  
(Donor)

I appoint ..... of ..... (or  
(Attorney)

..... of ..... and ..... of  
(Attorney) (Attorney)

..... jointly or jointly and severally) to be my attorney(s) in  
accordance with *The Powers of Attorney Act, 1979* and to do on my behalf anything  
that I can lawfully do by an attorney.

(The following paragraph may be included if the donor wishes the authority  
granted by this power of attorney to continue notwithstanding any subsequent  
mental infirmity on his part.)

In accordance with *The Powers of Attorney Act, 1979*, I declare  
that this power of attorney may be exercised during any sub-  
sequent legal incapacity on my part.

This power of attorney is subject to the following conditions and restrictions:

(N.B. this space may be left blank.)

WITNESSED BY:

.....  
(Signature of Witness)

.....  
(Name of Witness)

.....  
(Address)

}  
.....  
(Donor)