

THE ADVISOR

CURRENT BUSINESS AND PERSONAL SERVICES LAW ISSUES

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EMPOWERING YOUR LOVED ONES FOR INFORMED DECISION-MAKING



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If you lose the capacity to make your healthcare/ personal care or financial decisions, what will happen? Most Albertans believe that their spouses or common law partners will automatically have the authority to make such decisions on their behalf. However, this is not the case.

Unlike some other Canadian provinces, Alberta does not have legislation that sets out an order of priority for substitute decision-making for incapable adults. In Alberta, there is no law that automatically gives your family or loved ones the right to make decisions on your behalf. The *Adult Guardianship and Trusteeship Act* authorizes a health care provider to select your nearest relative to make treatment decisions in specific emergency or temporary situations. However, in situations of a non-urgent nature your family does not have the authority to make decisions on your behalf in the absence of a Personal Directive/Enduring Power of Attorney or a Court order.

On this basis, we strongly recommend that every Albertan prepares both an Enduring Power of Attorney and a Personal Directive. Such documents are preferable to relying on the guardianship and trusteeship process for many reasons. The application process for obtaining a guardianship and trusteeship order is lengthy, challenging and, if you engage a professional, expensive. In Alberta, even simple, uncontested desk applications for guardianship and trusteeship are currently taking at least 4-6 months to receive a Court order. This is a lengthy delay when family members require access to the incapable adult's finances or health care records, or are making arrangements for the adult's long term care. Most significantly, perhaps, the person that is appointed as your Guardian and Trustee may not have been the person that you would have chosen to manage your finances or make your personal care decisions.

By contrast, Enduring Power of Attorneys and Personal Directives allow individuals to appoint whomever they wish to make their decisions for them in the event of incapacity. Also, once the incapacity has been confirmed (by whatever means the individual directs), the appointed decision maker can promptly begin acting on your behalf and according to your instructions.

Such documents can also be used to provide your decision maker with specific instructions as to how you wish them to exercise their authority during your incapacity. Your Personal Directive may directly communicate specific instructions, preferences and values with respect to medical treatment, accommodation or participation in social activities. Your Enduring Power of Attorney may specifically instruct your decision maker to financially assist a family member, to continue making donations to your chosen charities, or to formally account to specific people on a periodic basis. Planning ahead also allows your family members to have a degree of certainty and comfort when they are faced with difficult decisions and stressful circumstances. The simple act of creating a Personal Directive may promote discussion about your personal care/healthcare wishes with your agent and loved ones, which will place your appointed agent in a better position to make decisions that accurately reflect your wishes in the event that your agent needs to exercise her authority on your behalf.

Our Wills, Estates, and Trusts group has expertise and experience in this area and can assist if you wish to prepare an Enduring Power of Attorney and Personal Directive, or discuss preparing an estate plan that contemplates your specific circumstances and will assist to implement your intentions.▲