



Do you need a power of attorney?

YOUR LAND IN LIMBO

By Kara Kurylłowicz

The term “power of attorney” isn’t something typically on the mind of the young and the restless. But if you have assets and debts, and don’t have a power of attorney, the results can be frustrating and financially crippling.

People mistakenly assume that a spouse, parent, sibling or trusted friend can act on your behalf if you were incapacitated due to an accident, suffered a medical mishap or otherwise. But legally, nobody has the authority to access your funds to pay your bills, or sell your investments and real estate in order to care for you.

“We don’t think anything bad will happen, but catastrophic accidents and illnesses can and do happen at any age,” says Natalie Schernitzki, an associate lawyer specializing in wills and estates/commercial litigation, Morrison Brown Sosnovitch LLP. “If you haven’t assigned a power of attorney for property, which includes assets such as real estate, bank accounts and investments, the results can be pretty catastrophic on a number of levels.”

A power of attorney of property may be appointed for a limited purpose or on a continuing basis. A “limited power of attorney” becomes effective as soon as it is signed, and can save you cost and inconvenience. For example, you live overseas. A limited power of attorney could give the appointed person (“the attorney”) the ability to sign property purchase documents on your behalf, and you never have to get on a plane. However, a “continuing power of attorney” becomes effective in the

event that you are incapacitated, and allows the attorney to manage your assets during your incapacity.

Is not having a continuing power of attorney for property really that big a deal? Yes! In dire circumstances, it could render your estate in limbo, leaving your loved ones to pay your expenses out of their own pockets until you regain consciousness, or until they are granted guardianship by the court – both scenarios posing a potentially long waiting period.

Power of attorney vs. guardianship

Guardianship provides the same authority as power of attorney, but the attorney is selected by the individual while they are still capable whereas a guardian, for example a family member or friend, must apply to the court for guardianship after the individual has been deemed incapable by a government-certified capacity assessor.

“In my experience, nine out of 10 people don’t have a power of attorney and without one, if something goes wrong it’s an absolute horror show,” says Gerry Miller, managing partner of Toronto law firm Gardiner Miller Arnold.

Your attorney for property has the power and freedom to make decisions on your behalf and take actions concerning your property and financial affairs. This can include everything from collecting debts to paying bills, buying goods and services, selling, storing or disposing of personal belongings, and maintaining or selling property or conversely, buying it.

Lawyers will typically charge about \$350 for a single Power of Attorney and about \$450 for spousal POAs that essentially mirror one another. Gardner Miller Arnold offers

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a will package, for a straightforward will, that includes the power of attorney for \$500, while a single POA will cost \$150. MBS also offers a package of wills and powers of attorney for property – \$1,000 for one person and \$1,200 for a couple. Is it worth the price? The capacity assessor’s fee will likely be \$1,000 or more, while having a lawyer prepare and present the guardianship application will typically start at \$5,000 and can be double or even triple that price.

If you have assets and bills to be paid, you need a power of attorney for property, whether you’re in your 20s or your 60s, are single, married or in a long-term, committed relationship. As both Miller and Schernitzki point out, if you’re incapacitated, the people who care about you are already facing significant emotional and even practical challenges without adding the psychological and financial burden of your land in limbo.

