

Substitute Decision Making in a Social Distancing Environment

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Social distancing restrictions put in place to flatten the curve, and reduce the spread of COVID-19, has broad implications including the implementation and operation of powers of attorney for property and personal care. People relying on their appointment as attorneys to help loved ones at this time should be mindful of a few key points.

- Your duties and responsibilities have not changed due to the crisis. You are still required to act in the best interests of the person who appointed you.
- Acting in a person's best interest means making decisions as if you were that person, including consideration of religious or other ethical dictates in the case of powers of attorney for personal care. You cannot substitute your opinion just because you disagree.
- Powers of attorney for property can be effective on signing, on a finding of incapacity, or other limitation such as a specific transaction or time period. You should read the document to see if there are limits on its application. Where it is effective on signing and the grantor is still capable, you can only carry out activities as requested by the grantor. If the grantor loses capacity or you have a reasonable belief that they have, then your authority increases.
- Powers of attorney for personal care are effective on incapacity. However, under Ontario law, capacity is task based. As a result, a person may be incapable with respect to some decisions such as a complex surgery or treatment, but able to decide about nutrition or hygiene issues. It is up to the relevant health care provider to determine if they believe they are able to get informed consent for a particular decision. If not, they will seek assistance from the attorney for care.
- You are legally required to keep good records of the decisions you make whether you are acting as attorney for property or care. In the case of power of attorney for property, you can be called upon to formally present and justify your handling of the grantor's finances. This can be a costly exercise even with good records.

Where the execution of documents is needed to give effect to urgent instructions, care should be taken and all government guidelines for distancing followed. For businesses categorized as essential and authorized to operate, potential precautions include parties being separated by glass or windows, as well as sanitizing of pens, phones and desks. In certain cases, formalities have been relaxed and phone or video conferencing is allowed, but not for the execution of Wills or powers of attorney. For now, everyone should "use caution" and "get professional advice" before proceeding.

Note: The information provided is based on Ontario law, and the laws of Canada applicable therein. However, it does not constitute legal advice or create a solicitor-client relationship. Readers are encouraged to consult a member of [Blaneys' Wills and Estates practice group](#) for advice specific to their circumstances. We are available by telephone and electronically during the COVID-19 crisis.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.