



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

POWERS OF ATTORNEY ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to January 1, 2009. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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POWERS OF ATTORNEY ACT

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POWERS OF ATTORNEY ACT CHAPTER P-16

1. Interpretation

In this Act

- (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- (b) repealed by 2008, c.20, s.72;
- (c) “**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. 1988, c.51, s.1; 2008, c.20, s.72(73).

2. Form of general power of attorney

A general power of attorney may be in Form 1 of the Schedule 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. 1988, c.51, s.2.

3. Exercise of power after termination

- (1) Where a power of attorney is terminated or revoked or becomes invalid, 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, revocation or invalidity.

Saving

- (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. 1988, c.51, s.3.

POWER OF ATTORNEY DURING LEGAL INCAPACITY

4. Application of ss. 5-10

Sections 5 to 10 apply notwithstanding any agreement or waiver to the contrary. 1988, c.51, s.4.

5. Powers of attorney exercisable while donor without capacity

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. *1988, c.51, s.5.*

6. Execution

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. *1988, c.51, s.6.*

7. Revocable

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. *1988, c.51, s.7.*

8. Power of attorney

Repealed by *2002, c.38, s.4.*

9. Passing accounts

- (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 court 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 Prothonotary 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.

Application by Public Trustee

- (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. *1988, c.51, s.9; 2008, c.20, s.72(73).*

10. Substitution of attorney

- (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 court 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.

Effect of substitution

- (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* R.S.P.E.I. 1988, Cap. T-8.

Application by Public Trustee

- (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 attorney

- (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. *1988, c.51, s.10.*

SCHEDULE

FORM 1

FORM OF POWER OF ATTORNEY

THIS GENERAL POWER OF ATTORNEY is given on20
(Date)

by..... of
(Donor)

I appoint..... of
(Attorney)

(orof
(Attorney)

and..... of
(Attorney)

jointly (or jointly and severally) to be my attorney(s) in accordance with the *Powers of Attorney Act* 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*, I declare that this power of attorney may be exercised during any subsequent legal incapacity on my part.

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

WITNESSED BY:

.....)
(Signature of Witness)

.....)
(Name of Witness) (Donor)

.....)
(Address)

.....)