

# It's In Your Hands:

Legal Information for Seniors  
and their Families



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## Acknowledging the Land

The Legal Information Society of Nova Scotia recognizes that it is situated on Mi'kmaq'ki, the ancestral and unceded territory of the Mi'kmaq people. This territory is covered by the “Treaties of Peace and Friendship,” which Mi'kmaq, Wolastoqyik, and Passamaquoddy signed with the British Crown in 1726. The Treaties recognized Mi'kmaq, Wolastoqyik, and Passamaquoddy title to the land and established rules for an ongoing relationship between nations.

We are all treaty people.



**DISCLAIMER:** This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.

**Content writer 5th edition:** Wendy Turner

**Writing, editing and research earlier editions:** Lis van Berkel, Maria Franks, Brenda Pate, Nicole Slaunwhite, Wendy Turner, Nicole Watkins-Campbell

**Design and layout:** Lisa Neily

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## Introduction

Everyone has questions about laws that affect our lives. Our questions may change over time with world events, and as we grow up, move into the workforce, start a family, care for loved ones, plan for retirement and become older adults ourselves.

This book aims to:

- a) increase understanding of everyday legal issues and planning for the future, with a focus on preventing legal problems, and
- b) increase the knowledge and understanding of family members, friends, caregivers, and service providers about legal and financial issues affecting older adults, and about some relevant resources and supports.

Older adults and service providers helped develop the list of topics included in the book by participating in focus groups and surveys. The topics are relevant to folks of all ages though, not just older adults. For example, every adult should plan ahead for incapacity by writing an enduring power of attorney and personal directive, and should have a good estate plan, including a will. Anyone may be targeted by a scam or may experience abuse.

You may read this book from cover to cover or you may just want to read the topics that most interest you. As you read through you may find some legal words you do not know. At the end of the book, there is a 'What do the words mean?' section which tells you what many of the legal words mean.

It is not possible to cover all the legal issues that might interest everyone. For some topics you will find more resources and answers to common questions on the [Legal Information Society of Nova Scotia's website](#).

You can contact the Legal Information Society of Nova Scotia for free legal information on any of the topics covered in this book, and on a variety of other legal topics.

## General legal information

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](http://www.legalinfo.org)

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# Abuse of Older Adults

Abuse can happen to anyone. Financial abuse is the most commonly reported form of abuse for older adults, but there are many other types. This chapter talks about laws that aim to protect older adults from different forms of abuse.

*See the chapter on **Dating and Relationships** for more about abuse that happens when people date or are in a relationship.*





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# ABUSE OF OLDER ADULTS

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**A**

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# What is abuse of older adults?

Abuse of older adults is any action that threatens the health, safety, or well-being of an older person. It is also called senior abuse or elder abuse. Abuse can be acts, words, or neglect. It may happen once or over a period of time. Sadly, most abuse of older adults comes from a family member, friend, or caregiver. The most common types of abuse are listed below.

- **Financial abuse** is when someone takes your money or does not let you have your money or misuses your money. They might steal cash, cheques, or savings. They may take your money by using your bank card or demand access to your online bank account. They may threaten or prevent you from having contact with your grandchildren or others you love unless you give them money or gifts. They may demand you sign a debt, lease or loan with them. Or they might demand that you get a loan and that you give them all of the money. They might pretend to be you in order to get your money from your bank account. Or they might misuse your money, property, or authority such as a power of attorney. For more information about misuse of power of attorney and ways to protect yourself, see the chapter on Powers of Attorney.
- **Physical abuse** is when someone hurts you by punching, kicking, slapping, shaking, pushing, burning, throwing objects, scalding you with hot water, or in other ways. It also includes using physical restraints, locking you in a room, or giving you the wrong medication on purpose.
- **Sexual abuse** is any form of sexual activity that is not wanted – it is without your consent. Some examples of sexual abuse are unwanted sexual comments, intercourse, touching or fondling, or kissing.
- **Emotional, psychological or mental abuse** is when someone uses words to hurt you. This includes when someone:
  - calls you names, uses put-downs, threatens, blames, bullies, teases, or humiliates you
  - cuts off your contact with friends and family, stops you from having visitors, or threatens to do these things
  - makes hurtful or cruel comments
  - constantly criticizes, insults or belittles you
  - controls or frightens you
  - threatens to harm you, or to harm people you care about or your pets
  - encourages you to commit suicide
  - uses your friends or relationships to harm you. This includes spreading rumours, gossiping, excluding you from a group or making you look foolish or unintelligent
  - threatens to put you in an institution.

- **Neglect** is when an abuser does not give you your basic needs, like food, medical care, shelter, general care, or clothing. Sometimes, a family member or caregiver might neglect the person they are caring for. “Self-neglect” is when you cannot or will not care properly for yourself and do not want and refuse to have someone else help you.
- **Denial of rights** is when an abuser keeps you from doing what you have the right to do. They might keep important information from you. They might open your mail without your permission. They may prevent you from going to your faith or cultural events. They might restrain you, which means holding or tying you down. Or they might confine you, which means keep you in a place you do not want to be.
- **Online abuse** is when someone harasses or hurts you online, using email, texting, instant messaging or other technologies. They might share private photos of you without your consent, or they might harass you online or on social media or track your electronic communications. They might encourage you to commit suicide. Online abuse is sometimes also called cyber-abuse or cyber-bullying.
- **Harassment**, including stalking, is any unwanted physical or verbal behaviour that offends, threatens or humiliates you. It may also include following you and not leaving you alone.
- **Coercive and controlling abuse** is a pattern of behaviour aimed at controlling or dominating another person. There may be physical abuse, together with emotional, psychological, sexual, financial or other forms of abuse. Coercive and controlling abuse is very dangerous because it is part of an ongoing pattern and tends to be more serious.

## Is abuse of older adults a crime?

Some forms of abuse of older adults are a crime. A crime is a violation of the *Criminal Code of Canada*. The Criminal Code applies to all of Canada. The following lists some criminal offences that may apply if an older adult is being abused:

### **Financial abuse**

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- Theft, including theft by a person who has power of attorney
- Fraud and fraud with a credit card
- Robbery
- Breaking and entering
- Forgery and using forged documents
- Extortion (using threats or violence to make a person do something)
- Criminal breach of trust
- Stopping mail with intent to rob or search it

## **Physical Abuse**

- Assault ('common' assault, assault with a weapon or causing bodily harm, aggravated assault)
- Sexual assault, aggravated sexual assault, sexual assault with a weapon
- Forcible confinement
- Murder or manslaughter
- Administering a noxious substance
- Counselling suicide

## **Emotional, psychological or mental abuse**

- Threats to harm
- Criminal harassment (also called 'stalking'), including repeated unwanted contact
- Intimidation

## **Neglect**

- Criminal negligence causing bodily harm or death
- Breach of duty to provide necessities of life

## **What can the police do?**

If you have been abused or neglected or think someone else is being abused or neglected, reporting it to the police may be an important part of protecting yourself or supporting the person being abused. Reporting abuse to the police is one way to possibly stop abuse now and to prevent it from happening again. If it is not reported the abuse may continue.

Anyone can report abuse of older adults to the police. The police can investigate the report. This might include getting:

- a statement from the victim
- a statement from the accused
- statements from neighbours, family members, or service providers who might have evidence
- photographs of any injuries
- a medical report
- financial records
- any other evidence that is relevant to the complaint.



# ABUSE OF OLDER ADULTS

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The police will investigate and decide whether to lay charges against the person accused of abuse. They will lay charges only if they have enough proof to convict the abuser in court.

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### Help for victims in a criminal case

Fear is a major reason abuse is not reported. A victim may be worried about reporting abuse or giving evidence in court. Some victims of abuse may not be physically or mentally able to do this on their own. The victim may be afraid of the abuser, or the abuser might be someone the victim cares about, including a family member, and the victim may want to maintain family relationships. The victim may be dependent on the abuser.

Victims of abuse who are asked to testify in court can get help and support from a victim services program. Nova Scotia's Provincial Victim Services Program offers victims of crime information and support as a case moves through the criminal justice system, and can be reached 1-888-470-0773 or get information at [https://novascotia.ca/just/victim\\_services/](https://novascotia.ca/just/victim_services/)

Judges can order things to make it easier for vulnerable older adults to testify in court. These may include:

- allowing a support person to be there while the victim testifies
- allowing the victim to testify remotely or behind a screen
- having a lawyer do the cross-examination when the accused is self-represented, so that the victim is not questioned directly by the accused
- ordering a publication ban so that identifying information is kept private
- ordering that some members of the public not be allowed in the court.

Even if the abuse is not a crime, police or victim services can give information and refer to various community supports for help addressing and stopping the abuse. Some community supports are listed at the end of this chapter.



**Remember: Abuse is never the victim's fault. People in healthy relationships are not violent or abusive with each other. No one has the right to be violent or abusive with other people. It is always best to reach out to someone you trust for help, even if you choose not to go to the police about the abuse.**

# I am mentally and physically competent and I am being financially abused. Where can I go for help?

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Financial abuse can happen to anyone. It is the most commonly reported form of abuse of older adults. Remember, you are not alone.

Financial abuse may include the following:

- manipulating or threatening you to gain access to your money or property. For example, forcing you to make or change important documents like your will or a power of attorney, or to sign a contract for a loan
- theft, including from joint bank accounts
- forgery. For example, someone signing your name to cash a cheque
- fraud (someone tricking you to get money from you)
- abusing your power of attorney.

If you are being financially abused, you may want to:

- contact NS 211 for support and information about community resources that can help
- talk to a lawyer or someone else you trust. Contact a lawyer you know, or get in touch with the Legal Information Society of Nova Scotia for legal information or help [finding a lawyer](#)
- talk to the police. Financial abuse such as theft, theft by a person who has power of attorney, forgery, and fraud are crimes under the Criminal Code of Canada.



Keep your paperwork and records. You might need records for a police investigation or if you go to court. Records can include emails or text messages, a diary of events, copies of cancelled cheques, and copies of legal documents.

Also see the chapters on *Scams, Identity Theft and Other Fraud* and *Powers of Attorney*.

# A

## How are seniors in health care facilities protected from abuse?

Abuse can happen to patients and residents of provincially regulated facilities, including health care and community homes. Nova Scotia's [Protection for Persons in Care Act](#) helps to protect patients and residents 16 years of age and older from abuse.

The facilities include:

- hospitals
- residential care facilities
- nursing homes
- homes for the aged or long term care homes
- homes for people with disabilities including small options homes
- group homes
- residential centres.

A service provider who is doing their duties and following recognized standards and practices and their policies and procedures is not abusing their patients or residents.

Facility staff must protect patients and residents from abuse and keep them reasonably safe. If you report abuse to them, or if they suspect or see abuse, they must report it to the Department of Seniors and Long-term Care. Anyone can report abuse by contacting Continuing Care toll free at 1-800-225-7225, or the police.



## What kinds of abuse are older adults in health facilities protected against?

Under the *Protection for Persons in Care Act* abuse may be any of the following:

- physical
- sexual
- emotional
- misuse of medication
- neglect
- misuse or theft of money or possessions.

The Act does not protect against all financial abuse. It protects against misuse or theft of money or possessions belonging to a patient or resident in the facility.

If you believe that a senior in care is the victim of financial abuse and cannot look after their affairs, you should talk with them. You might also talk to someone who is close to the senior, like a family member, who may be able to help the senior.

You can also call the police. Some financial abuse, like fraud or theft, is a crime. A senior who is being financially abused should talk to the police and to a lawyer.

### **What happens if I report abuse of a person in a care facility?**

If you believe a person in a care facility is being abused, you can report the abuse to the police or to the Department of Seniors and Long-term Care, toll-free at 1-800-225-7225.

The Department will tell the patient or resident that someone has reported abuse and that the Department will investigate the situation. The investigator will write a report. They might make recommendations to protect the patient or resident or to investigate the matter more.

### **Will the police be involved?**

The police will be involved if there is proof that the abuse is a criminal offence. This would happen if the investigator found evidence of a crime like physical assault, sexual assault, theft, or fraud. If a caregiver failed to care for a senior, they could be charged with neglect.

## **Adult Protection Services**

### **How are seniors protected from abuse where they live?**

Some adults live in their own homes even though they no longer have the physical or mental ability to care for themselves, or they might live with family members. The [Adult Protection Act](#) helps to protect them from physical, sexual, and mental abuse as well as from neglect. It does not protect them from financial abuse.

The *Adult Protection Act* protects adults who are “in need of protection.” This means a person who is 16 years old or older and who:

- has a physical or mental disability
- is abused or neglected where they live
- cannot protect themselves from the abuse or neglect
- refuses, delays, or cannot provide for their own care.

The *Adult Protection Act* does not aim to punish abusers but to protect people from harm.

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### **Does the Adult Protection Act protect older adults against financial abuse?**

Sometimes a person physically abuses or neglects an older adult to get money or property or for access to their bank account. If someone reports this abuse to Adult Protection Services, they will investigate. The investigation and steps taken by Adult Protection Services to protect an older adult from the physical abuse or neglect may stop the financial abuse.

If you believe an older adult is being financially abused and is unable to look after their affairs, you should talk with them, even if there is no physical abuse or neglect. You might also talk to a trusted person who is close to the senior (such as a family member) who may be able to help.

You can also contact the Public Trustee or the police. The Nova Scotia Public Trustee's Office has the right to act for certain people who cannot take care of their own affairs. The Public Trustee will look into your complaint and may talk with the police or the Department of Seniors and Long-term Care. You can get more information on the Public Trustee's website at [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/) or call the Nova Scotia Public Trustee at 902-424-7760.

Some financial abuse is a crime, for example, stealing, forging a signature, or misusing a power of attorney. A senior who is being financially abused should talk to the police and to a lawyer.

For more information, see the chapters on the *Public Trustee, Adult Capacity and Decision-making, and Powers of Attorney*.

### **How do I report abuse or neglect of a senior in their home or community?**

Anyone can report abuse or neglect to Adult Protection Services, or you can report it to local police. You can call Adult Protection Services toll-free at 1-800-225-7225.

Often community agencies that have contact with a senior may report abuse or neglect. Sometimes the police or health care professionals do. It does not matter if the information is confidential — if they know it, they must report it. Relatives, neighbours, friends and even strangers also report abuse or neglect.

You do not have to be sure that abuse or neglect is taking place if you want to make a report, but you must have good reason to believe that the senior needs some protection.

If you are wrong about the abuse or neglect, you are protected from being sued if you had good reason to make the report. Someone can sue you only if you made your report without good reason.

If you report abuse or neglect, your identity is confidential. However, if the case goes to court, you may have to give evidence. Then your identity would become known.

It is an offence not to report abuse or neglect of an adult who needs protection. Anyone who fails to report could be charged. If convicted, the maximum penalty is a fine of up to \$1,000 or prison for up to one year, or both.

## What happens if I report abuse of an older adult in their home?

If you report abuse or neglect of an adult in their home or community, Adult Protection Services must find out if there is reason to believe that the adult is in need of protection. It may investigate in one of the following ways:

- visiting the adult's home
- talking with the adult
- meeting with the person accused of the abuse
- meeting with you, as the person who reported the abuse
- asking a doctor to assess the adult's level of capacity, their need for care and attention, and whether they have been abused
- talking with the adult's family, doctor, caregivers, and neighbours.



If the investigation shows that the adult can make competent decisions and that they are not refusing help because of threats or coercion, then Adult Protection Service will end its investigation. It may suggest services that the adult can use, but it cannot force the senior to use these services.

If adult protection workers find proof that an adult needs protection, they must help them get services to make things better.

If there has been a criminal offence, the Adult Protection Service must report it to the police.

## What kind of services does Adult Protection provide?

Adult Protection does not provide services itself. Adult Protection workers help the adult or the adult's family find the services they need and can get in the community. Services can include help in their own home or meals on wheels. They may talk with the senior about living somewhere else, such as shared housing, seniors' apartments, and homes for special care. They can give them priority on waitlists for government services like nursing homes.



## Who pays for these services?

The adult is expected to pay for these services if they can afford to. Some privately run services charge fees based on what users can afford to pay. Some services are run by volunteers. If the adult cannot afford to pay, the province will.

## Does an older adult have to agree to an assessment by Adult Protection Services?

If Adult Protection Services is concerned a senior is unable to look after their own needs and is at risk of abuse or neglect, they may ask the senior to have an assessment. If the senior refuses the assessment, or if their caregiver refuses, Adult Protection Services may ask for a court order authorizing entry into the senior's home. If the judge orders an assessment, Adult Protection Services will be able to go into the place where the senior lives so that it can do the assessment. The Adult Protection worker may ask a doctor to assess the senior's level of capacity to make decisions.

Usually, the senior will get at least four days' notice before entry is ordered. In an emergency, a judge can allow entry without notice.

## Who decides whether a senior needs protection?

If Adult Protection Services believes that a senior needs protection but is refusing help, they can ask the court for an order that says that the senior needs protection. A judge then holds a court hearing to decide the matter.

If the adult protection worker believes that a senior is in immediate danger, they can take the senior into care until a hearing can take place.

Before making an order that an adult needs protection, a judge must be satisfied that:

- the senior is a victim of abuse or neglect in the place where they live
- the senior is refusing services from Adult Protection Services either because they do not have the mental capacity to decide or because they are afraid of harm from the abuser if they accept the services.

After hearing the evidence, if a judge finds that the senior needs protection, they will make a protective intervention order. The judge must be satisfied that someone is a threat to the senior in need of protection and that something more is needed to keep the senior safe from an abuser.

## What is a protective intervention order?

A protective intervention order can order someone who may be a threat to a senior to:

- leave the place where the senior lives (unless that person owns or rents the place)
- have no contact or only some contact with the senior
- pay money to help support the senior.

Protective intervention orders may not be changed until at least three months have passed.

If a senior who needs protection does not have a representative decision-maker or if the representative is not protecting the senior's well-being and financial interests in decisions they make on the adult's behalf, the judge may notify the Public Trustee. The person we now call a representative used to be called a guardian in Nova Scotia.

## Can a senior be removed from their home?

Yes. Adult Protection Services may remove a senior from their home right away if they believe that:

- the senior's life is in danger
- the senior needs protection
- the senior cannot decide whether to accept services
- the senior is being pressured not to accept services.

Within five days of removing a senior from their home, the Minister of Seniors and Long-term Care must either return the senior to their home or apply to the court for an order saying that the senior needs protection.

If a judge finds that the senior needs protection, the Department of Seniors and Long-term Care can place the senior in a home for special care, to make sure the senior is safe from abuse and is not being neglected.

The Public Trustee may be asked to manage the senior's property if there is a danger that the property will be lost, wasted, or damaged while the senior is in care. (For more information, see the chapter on the Public Trustee.)



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## How long does a court order last?

An order saying that an adult needs protection or a protective intervention order lasts for six months. The order will end at that time unless a further application is heard by the court.

An application can be made to the court to renew, change, or end the order before the six months are up. Those who may apply are the Minister of Seniors and Long-term Care, the senior, someone acting on the senior's behalf, or the person against whom an order is made. Any renewal of the order will end after six months, unless it is renewed again.

## Is the judge's decision final?

No. A person could appeal the judge's decision to the Nova Scotia Supreme Court or to the Nova Scotia Court of Appeal. If you are thinking about appealing, you should talk with a lawyer before deciding what to do.

## What happens to the abuser?

The main purpose of the *Adult Protection Act* is to protect adults who need protection from abuse or neglect, not to punish people who abuse them. Investigation by Adult Protection Services may be enough to stop any more abuse.

People in abusive situations may be able to get counselling either as a victim or an abuser. A victim and an abuser would not usually get counselling together.

A protective intervention order can take an abuser out of the senior's home. A person who breaks a protective intervention order can be fined up to \$1,000 or sent to jail for up to one year or both. The senior may also be able to get a peace bond ('no-contact' court order) to stop an abuser from contacting them. The senior can call the police if an abuser breaks the peace bond.

The police might charge the abuser with a crime, as some types of abuse are a crime.

## Is there a register of abusers?

No. Adult Protection Services keeps files on reports of abuse in private homes and facilities. The files are not generally available to the public. Family members can apply for information in these files under Nova Scotia's [Freedom of Information and Protection of Privacy Act](#). You can get more information at the Nova Scotia government website by searching for 'access to information'. The website is at [novascotia.ca](http://novascotia.ca).

Criminal charges may be laid against the abuser in some situations. Abusers who are convicted of a criminal offence, such as assault, will have a criminal record.

# What can I do if I suspect an older adult is being abused by a representative?

A

The Nova Scotia Public Trustee's Office looks into reports of abuse of older adults by their representatives. A representative is someone with legal authority, by court order, to act for an adult who cannot make their own decisions. This authority comes from the Adult Capacity and Decision-making Act.

A representative must protect the adult's well-being and financial interests in any decision they make on the adult's behalf. The representative is permitted to do only the things listed in the representation order made by the court.

If you believe a representative is misusing their authority, you can complain to the Nova Scotia Public Trustee online at [novascotia.ca/just/pto](https://novascotia.ca/just/pto) under "Adult Capacity and Decision-making," or by telephone at 902-424-7760.

For more information about representation orders and the responsibilities of a representative, see the chapter on the Adult Capacity and Decision-making Act (representative decision-making).

# What is the Domestic Violence Intervention Act?

The [Domestic Violence Intervention Act](#) is a Nova Scotia law that protects people from violence by a partner or spouse. It does not protect against financial abuse. The law says that a victim can be a person 16 years old or older who has been abused in certain situations. The first is by a partner, if the couple is living together or has lived together. Another is by the other parent of one of the victim's children, even if the parents never lived together. The act does not protect people from abuse by a child or parent.

The act allows a court to make an emergency protection order. The order can last up to 30 days and can say the following:

- the victim has custody of a child
- the victim can stay in, or return to, the home and the other partner is not allowed on the property for a period of time

# ABUSE OF OLDER ADULTS

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- the victim has possession of property (such as a car, bank card, identification documents, health cards, and personal effects)
- the police can take the abuser's weapons
- the abuser cannot contact the victim.

An emergency protection order is only for situations that are serious and urgent. It is not meant to replace criminal law or family law options.

You can apply for an emergency protection order by calling 1-866-816-6555 between 9 a.m. and 9 p.m. Police officers can apply before or after those hours on a victim's behalf.

The *Domestic Violence Intervention Act* provides a quick process of review, notice, and hearing before a judge. For more information and resources, go to [www.legalinfo.org/family-law/family-violence](http://www.legalinfo.org/family-law/family-violence) or [www.nsfamilylaw.ca/family-violence](http://www.nsfamilylaw.ca/family-violence), or [talk to a lawyer](#).

## What if an older adult faces abuse online or on social media?

The [Intimate Images and Cyber-protection Act](#) aims to protect people from cyberbullying, or from having intimate images of themselves shared without their consent.

Cyberbullying is when someone uses electronic communication, like email, text messaging, or social media, to harm your health or well-being. They might be doing this on purpose to hurt you or they might not care about hurting you.

Examples of cyberbullying include when someone:

- creates a website, blog, or profile to make others believe it is you
- shares your sensitive personal information online or breaks your confidence
- threatens, intimidates, harasses, or scares you online
- makes false statements about you
- engages in communications that are grossly offensive, indecent, or obscene
- encourages you to commit suicide.

Cyberbullying can also include encouraging or forcing someone else to do these things.

The law also protects you if someone shares a private intimate image of you, such as a photograph, film, or video, without your consent. An intimate image is one that is private, shows sexual activity or nudity or partial nudity. It is an image you have good reason to think will stay private.

Under Nova Scotia law, “distributed without your consent” means publishing, posting or sharing the image with others, without your permission. It could also mean that the person who shared them did not think about or care whether you would have agreed to share the images with others, and did not ask you.

For example, without asking you and to try to hurt you, a former partner posts a private, sexually explicit, intimate picture of you on Facebook that you had good reason to think was going to stay private.

If you have been bullied or harassed online, or by text or email, or had intimate pictures of you shared without your consent, you can speak with the police, or contact Nova Scotia’s CyberScan Unit.

CyberScan oversees Nova Scotia’s *Intimate Images and Cyber-protection Act*. Contact CyberScan at [novascotia.ca/cyberscan/](https://novascotia.ca/cyberscan/) or call 902-424-6990 or 1-855-702-8324.

## Where can I get more information on abuse of older adults?

### Adult Protection Services

If you know an older adult in Nova Scotia who needs protection, call 1-800-225-7225 (toll-free). Adult Protection Services can help if you are worried that an adult is being neglected, abused or harmed.

### 211

If you need information, support, or a referral related to abuse of an older adult, call the Nova Scotia 2-1-1 information and referral service. You can also find them online at [ns.211.ca](https://ns.211.ca).

Supports are available for people of all genders, including trans, non-binary, two-spirited, and gender-diverse folks. Help is available through an interpreter in many languages. No matter where Nova Scotians live or how they identify, if they have concerns about their well-being, safety, and/or the safety of others, services are available any time of day or night and any day of the year. Supports include information, navigation, referrals, and brief intervention counselling.

2-1-1 can help you:

- find a safe place away from an abuser
- find information or advice about the law
- find victim services to help when you need it.



# ABUSE OF OLDER ADULTS

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## Canadian Network for the Prevention of Elder Abuse (CNPEA)

An organization dedicated to the prevention of the abuse of older people in Canada. Their website has information about abuse and neglect issues concerning older adults. <https://cnpea.ca/en/>

## Public Trustee's Office

Suite 501-1465 Brenton St.

P.O. Box 685

Halifax, NS B3J 2T3

Tel: (902) 424-7760

Email: [publictrustee@novascotia.ca](mailto:publictrustee@novascotia.ca)

<https://novascotia.ca/just/pto/>

## Nova Scotia Department of Seniors and Long-term Care

1741 Brunswick Street

Halifax, Nova Scotia B3J 3X8

Email: [seniors@novascotia.ca](mailto:seniors@novascotia.ca)

1-844-277-0770 (toll-free)

902-424-0770 (metro)

902-424-0561 (fax)

Twitter: @NSSeniors

## Seniors' Safety Programs

### Western Region

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#### Hants County

Hants County Seniors' Safety Association

Coordinator: Karen Crowe

Phone: 902-798-7173

Email: [hantsseniorsafety@gmail.com](mailto:hantsseniorsafety@gmail.com)

#### Kings County

Kings County Seniors' Safety Society

Coordinator: Michelle Parker

Phone: 902-542-3817

Email: [michelle.parker@rcmp-grc.gc.ca](mailto:michelle.parker@rcmp-grc.gc.ca)

Website: [kingsseniorssafety.com](http://kingsseniorssafety.com)

#### Annapolis County

Annapolis County Seniors' Safety Program Association

Coordinator: Sharon Elliott

Phone: 902-665-4481

Email: [sharon.elliott@rcmp-grc.gc.ca](mailto:sharon.elliott@rcmp-grc.gc.ca)

## **Digby County**

Digby and Area Seniors' Safety Society

Coordinator: Dawn Thomas

Phone: 902-245-2579 or 902-308-0544 (cell)

Email: [dawn.thomas@rcmp-grc.gc.ca](mailto:dawn.thomas@rcmp-grc.gc.ca) or [seniorsafety@digby.ca](mailto:seniorsafety@digby.ca)

Website: [www.digby.ca/seniors-safety-program.html](http://www.digby.ca/seniors-safety-program.html)

## **Municipality of Clare**

Security for Seniors Association/Association des seniors en sécurité Municipality of Clare

Coordinator: Hélène Comeau

Phone: 902-645-2326

Email: [helene.comeau@rcmp-grc.gc.ca](mailto:helene.comeau@rcmp-grc.gc.ca) or [clareseniorsafety@gmail.com](mailto:clareseniorsafety@gmail.com)

## **Yarmouth County**

Yarmouth County Seniors' Safety Program

Municipalities of Argyle and Yarmouth

Coordinators: Peggy Boudreau and Ashley Rhyno

Phone: 902-881-4099

Email: [peggy.boudreau@rcmp-grc.gc.ca](mailto:peggy.boudreau@rcmp-grc.gc.ca) or [Ashley.rhyno@rcmp-grc.gc.ca](mailto:Ashley.rhyno@rcmp-grc.gc.ca)

## **Shelburne County**

Shelburne County Seniors' Safety & Services Society

Coordinator: Shawna Symonds

Phone: 1-800-565-0397 (toll-free)

Email: [ssymonds@barringtonmunicipality.com](mailto:ssymonds@barringtonmunicipality.com)

Website: <http://ourseniorservices.com/>

## **Queens County**

Queens County Seniors' Safety Program

Coordinator: Shelley Walker

Phone: 902-350-0231

Email: [s.walker@eastlink.ca](mailto:s.walker@eastlink.ca)

## **Lunenburg County**

Lunenburg County Seniors' Safety Program

Coordinator: Chris Acomb

Phone: 902-543-3567

Email: [chris.acomb@bridgewaterpolice.ca](mailto:chris.acomb@bridgewaterpolice.ca)

# ABUSE OF OLDER ADULTS

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## **Eastern Region**

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### **Cumberland County**

Cumberland County Seniors' Safety Program

Coordinator: Trishe Colman

Phone: 902-664-4540

Email: [cumberlandseniorsafety@gmail.com](mailto:cumberlandseniorsafety@gmail.com)

### **Colchester County**

Colchester County Seniors' Safety Program

Coordinator: Doug MacDonald

Phone: 902-890-1382

Email: [dlMacDonald@truro.ca](mailto:dlMacDonald@truro.ca)

### **Antigonish County**

Antigonish Town and County Seniors' Safety Program

*Program is currently under development.*

## **Cape Breton**

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### **Richmond County**

Richmond County Seniors' Safety & Social Inclusion Program

Coordinator: Michele MacPhee

Phone: 902-587-2800 ext: 5

Email: [seniorsafetycoordinator.dkmchc@gmail.com](mailto:seniorsafetycoordinator.dkmchc@gmail.com)

### **Victoria County**

Victoria County Seniors' Safety Program

Coordinator: Cassandra Yonder

Phone: 902-295-3672

Email: [seniorssafety@countyvictoria.ns.ca](mailto:seniorssafety@countyvictoria.ns.ca)

## **Central Region**

### **Halifax area**

HRM Seniors' Safety Program

Coordinator: Esther Suh

Phone: 902-455-6393

Email: [esther.suh@von.ca](mailto:esther.suh@von.ca)

## Victim Services



### Provincial Victim Services Program

Information, support, and help if you are a victim of crime, or the spouse or relative of a victim. Information about your case, help to write a victim impact statement, help to apply for money or counselling and get special help for vulnerable victims or a witness of a crime.

Website: [https://novascotia.ca/just/victim\\_Services/programs.asp](https://novascotia.ca/just/victim_Services/programs.asp)

Halifax or Dartmouth or the South Shore: 902-424-3309

Annapolis Valley: 902-679-6201 or 1-800-565-1805 toll-free

Northern Nova Scotia: 902-755-7110 or 1-800-565-7912 toll-free

Cape Breton: 902-563-3655 or 1-800-565-0071 toll-free

### Halifax Regional Police Victim Services

Helps you in a crisis and after a crisis. Emotional support and help to find services. Help applying for a peace bond in the Halifax area.

<https://www.halifax.ca/fire-police/police/programs-services/victim-services-halifax>

902-490-5300

### Mi'kmaw Victim Support Services

Victim support for Indigenous people dealing with the criminal justice system. Provided by Mi'kmaq Legal Support Network

1-877-379-2042 (Cape Breton)

902-895-1141 (Mainland NS)

### RCMP Victim Services

Information or emotional support after a crime.

1-888-995-2929

### Independent Legal Advice for Sexual Assault Survivors Program

2-1-1

[novascotia.ca/SexualAssaultLegalAdvice](https://novascotia.ca/SexualAssaultLegalAdvice)

Up to 4 hours of free legal advice if you have been sexually assaulted and are 16 years old or older. You do not have to report to police or go to court to be able to use this service. They can help in English or French or use a free interpreter for other languages.

# ABUSE OF OLDER ADULTS

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## Peace Bond Information

- Legal Info Nova Scotia's information on [Peace Bonds at www.legalinfo.org](http://www.legalinfo.org)
- Visit [www.courts.ns.ca](http://www.courts.ns.ca) or a Provincial Court near you for forms and information on how to apply for a Peace Bond.
- Peace Bond fact sheet at [www.canada.ca/victims](http://www.canada.ca/victims)

## General legal information

Legal Information Society of Nova Scotia (LISNS)

Legal Information Line

902-455-3135 | 1-800-665-9779

Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)

[www.legalinfo.org](http://www.legalinfo.org)

# Adult Capacity and Decision- Making

If an adult is unable to make important health, personal care or financial decisions on their own, a family member or other caring person can apply to court to become the adult's representative to make some or all of those decisions for them. A representative may make only the decisions the adult is not able to make on their own.





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**



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# ADULT CAPACITY AND DECISION-MAKING

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## B

Sometimes an adult is not able to make important decisions about their health, personal care or spending. We say that they do not have **capacity** to make important decisions. This can be because of a brain injury, a disability, or mental health problems, or for other reasons.

People who cannot make important decisions on their own might need another adult to make those decisions for them. In those cases, another adult can apply to court to ask to be the adult's representative decision-maker or **representative**. The court cannot appoint a representative for any area already covered by a valid personal directive or enduring power of attorney.

A representative may have legal responsibilities and duties related to part or all of the adult's finances, personal and health care, including where the adult will live and work. A representative may make only the decisions the adult is not able to make on their own.

The [Adult Capacity and Decision-making Act](#) gives the court the power to appoint a representative for an adult who cannot make some or all of their own decisions. This law replaces *Nova Scotia's Incompetent Persons Act*, which allowed the court to appoint a guardian for an adult. A guardian made all decisions for the adult whether the adult had the ability to decide a matter or not.

## Adult representation

### What is adult representation?

**Representation** allows someone to be responsible for the personal and financial interests of an adult who is not able to make some or all of their own decisions. The person who applies for representation is called a **representative**. If an adult is unable to make significant health, personal care or financial decisions on their own another adult, such as a family member or other caring person, can apply to the court to be appointed as the adult's representative. Some people may refer to a representative as an adult guardian, attorney, delegate, or substitute decision maker, although these terms do not always have the same legal meaning.

The person for whom a representative is appointed is called an **adult in need of representation**. Only a judge can appoint a representative.

The law relating to adults who need a representative to help in decision-making used to be called the *Incompetent Persons Act*. The *Incompetent Persons Act* allowed the court to appoint an adult guardian. The *Incompetent Persons Act* was replaced by the *Adult Capacity and Decision-making Act* on December 28, 2017. The *Adult Capacity and Decision-making Act* allows the court to make a representation order appointing a **representative** for an adult.

Guardianship orders made under the *Incompetent Persons Act* continue as representation orders. Guardians become representatives, and have the same duties and responsibilities as new

representatives under the *Adult Capacity and Decision-making Act*.

Representation used to be called “guardianship”. This term has changed to encourage greater respect for adults who need help to manage their personal and financial interests.

A representative must use the **least intrusive** and **least restrictive** steps possible to help an adult in need of representation manage their affairs. This means that the representative must not interfere with the privacy and freedom of the adult in need of representation more than is absolutely necessary, and must consult with the adult before making decisions and keep them informed.

## What is a representative and what do they do?

A **representative** is a person who has the legal right to make decisions for another adult. A judge appoints a representative for an adult who does not have capacity to make some or all decisions. The judge also approves a representation order and a representation plan. These tell what decisions the representative can make and what actions they can take for the adult. A representation order may give a representative authority to make only a single decision on behalf of the adult, or the order might cover a number of decisions.

A representative can only make decisions for the adult that the adult cannot make for themselves. A representative may have authority to manage finances or to make health and other personal care decisions for the adult in need of representation. One example of a personal care decision is what social activities the adult will take part in. If the adult works, a personal care decision could be where and what type of work the adult will do.

A representative must:

- encourage the adult to make decisions whenever possible
- follow the adult’s prior instructions whenever possible
- follow the wishes of the adult whenever possible
- respect the adult’s beliefs and values
- only make decisions for the adult that the adult cannot make for themselves
- tell the adult about any decision they need to make or have made on the adult’s behalf
- protect the adult’s well-being and financial interests in any decision they make on the adult’s behalf
- act in good faith, and
- always make the least restrictive and least intrusive decisions possible.

# ADULT CAPACITY AND DECISION-MAKING

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A representative must not:

- make a decision the adult could make on their own
- make secret profits
- delegate authority to another person
- act for the benefit of anyone other than the adult
- sell or give away real estate belonging to the adult without a court order
- make or change the adult's will
- start a divorce or change parenting arrangements, parenting time, contact or interactions with a child without a court order
- agree to adoption or guardianship of a child without a court order
- agree to tissue donation from the adult without a court order
- agree to a treatment, procedure or therapy that uses aversive stimulus without a court order
- give away anything that belongs to the adult
- represent themselves as the adult in any communication.

A representative may give gifts to the adult's loved ones out of the adult's property only if the court agrees.

A representative must keep good records of all financial decisions. If the representation ends for any reason, the representative must give the court records about financial decisions. The judge can order the representative to give those records or report to the court at any time.

Representatives must always protect the adult's privacy and personal information.

A representative who thinks the adult's ability to make decisions has changed must have the adult's capacity reassessed and must apply to court to have the representation order reviewed if the adult's ability to make decisions changes.

The Nova Scotia government has a [Guide to Applying for a Review of a Guardianship Order or a Representation Order](#). It is on the NS [Public Trustee](#) website at [novascotia.ca/just/pto/adult-capacity-decision.asp](https://novascotia.ca/just/pto/adult-capacity-decision.asp).

## Who needs a representative?

An adult may need a representative if they do not have the capacity to make their own decisions. The lack of capacity may be temporary or permanent. This might happen when a person:

- is in a coma after an accident
- has an illness like Alzheimer's disease
- has a mental disability that stops them from managing their lives
- has a mental disability as the result of accident or injury.

See the Nova Scotia government's Guide to Adult Representation, under Is Representation the Best Option, for information about some things to consider in deciding whether a representation order is needed. The guide is on the NS Public Trustee website at [novascotia.ca/just/pto/adult-capacity-decision.asp](https://novascotia.ca/just/pto/adult-capacity-decision.asp) or contact the Nova Scotia Public Trustee at 902-424-7760 to request a copy.

The court cannot appoint a representative for any area already covered by a current, valid personal directive or enduring power of attorney. See the chapters on Health Care Treatment and Consent, Powers of Attorney for information about personal directives and powers of attorney.

## What is capacity?

**Capacity** is the ability to do or understand something. In decision-making, capacity means you can understand:

- the information needed to make a decision, and
- what could happen because of a decision.

For example, you have capacity to agree to medical treatment only if you understand how the treatment could be good for you or bad for you.

All adults are presumed to have capacity unless there is clear evidence to prove this is not the case. Adults have a right to make their own decisions. This includes the right to make decisions that friends or family might think are risky or unwise. Just because someone made a bad decision, or decisions others might disagree with, does not mean they do not have capacity to make their own decisions.

A person can have different capacity at different times.

For example, you might be able to understand and make decisions about your health care, but not decisions about your money or property.

The way an adult communicates does not tell people whether they have capacity. You may need help

from a translator, interpreter, family member, friend, or technology to tell people about your wishes. This does not mean that you cannot understand information or make decisions.

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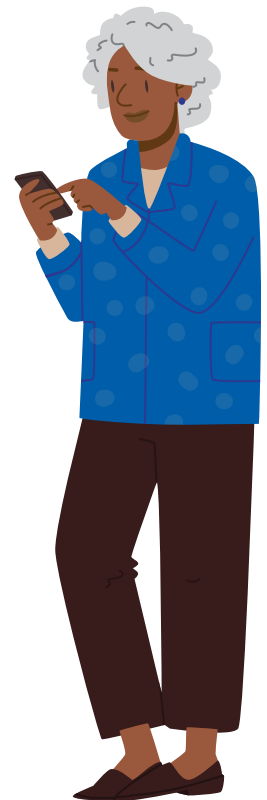
## Representatives

### How is a representative appointed?

A representative for an adult is appointed by a judge of the Supreme Court of Nova Scotia. The judge will hold a hearing to decide if the adult has the capacity to make important decisions for themselves.

When deciding if a representative should be appointed, the court will consider:

- the adult's wishes
- a capacity assessment report
- any other evidence about the adult's capacity
- a representation plan
- any power of attorney made by the adult
- any personal directive made by the adult
- the areas where the adult may need help
- the value and type of property the adult owns
- any other evidence the court thinks is important.



### Who can be a representative?

Any adult can apply to be the representative decision-maker for an adult who does not have capacity to make important decisions on their own. A court will appoint a representative only when a judge is sure that the adult needs one because they do not have the capacity to make certain decisions, and that the proposed representative:

- agrees to be appointed
- will fulfill their duties under the *Adult Capacity and Decision-making Act*, and
- is suitable to act as the adult's representative.

The judge will also think about:

- the adult's views and wishes
- the relationship between the adult and the proposed representative where relevant to a representative's duties
- things that might make it harder for a judge to oversee a representation order, such as if a proposed representative lives outside Nova Scotia
- the proposed representative's ability to carry out their responsibilities
- anything else the judge feels is relevant.

The court can appoint a trust company or the Nova Scotia Public Trustee as a representative. A trust company can only deal with a person's finances. For more information, contact the Office of the Public Trustee at [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/).

## Can the court appoint more than one representative?

A court may appoint more than one representative to share the responsibility (jointly) or to have separate responsibilities for decision-making.

If two or more representatives are appointed to act together, the representation order must include a way to resolve any disputes that might come up between the representatives when carrying out their duties.

Where the representatives act jointly and one of them is no longer able to carry out their responsibilities, the remaining representative alone can continue to carry out their full responsibilities.

## How do I apply to be a representative?

The Nova Scotia government has a Guide to Adult Representation that provides information on applying to become a representative. It is on the Nova Scotia Public Trustee website at [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/) under Adult Capacity and Decision-making, or contact the Nova Scotia Public Trustee at 902-424-7760 to request a copy.

It is important to know whether the adult has an enduring power of attorney and/or personal directive in place. See the sections on Power of Attorney and Health Care Treatment and Consent for information about those documents. If those documents are in place, a representation order may not be needed.

If you have chosen to become a representative decision-maker for an adult, you will need to apply to the Supreme Court of Nova Scotia. The process takes time and is technical. It is a good idea to talk

# ADULT CAPACITY AND DECISION-MAKING

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with a lawyer, even for a short time.

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You must fill out several forms to apply to be a representative. You must file the forms with the Supreme Court of Nova Scotia. The forms you need are listed below. You can get them from the Supreme Court of Nova Scotia, or online at [courts.ns.ca](https://courts.ns.ca), in the Nova Scotia Civil Procedure Rules, which are the rules about forms and processes used at the Supreme Court of Nova Scotia. You will find court contact information at [courts.ns.ca](https://courts.ns.ca), or under courts in the telephone book.

You must file:

1. A Notice of Application in Chambers – Form 5.03, under Civil Procedure Rule 5.03 (“Chambers” is where judges have shorter hearings)
2. A Supporting Affidavit (a sworn or affirmed statement explaining why you believe the adult needs a representative) – Form 39.08, under Civil Procedure Rule 39.08. See the Guide to Adult Representation on the Nova Scotia Public Trustee website at [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/) for information about what to include in the affidavit.
3. A draft order for the judge to sign if they agree to appoint you as representative – Form 78.05, under Civil Procedure Rule 78.05

You must also give the court these documents:

1. A letter to the court explaining why you believe the adult needs a representative (sometimes called “a brief” or a “written submission”)
2. A capacity assessment report from an approved health professional (medical doctor, psychologist, other trained capacity assessor), unless the adult in need of representation has refused or is unable to undergo an assessment
3. A representation plan
4. A vulnerable sector check (a background check completed by police)

You can find the forms for a capacity assessment report and representation plan on the Public Trustee’s website [novascotia.ca/just/pto/forms.asp](https://novascotia.ca/just/pto/forms.asp) under Adult Capacity and Decision-making.

When you have filled out all of these documents, take them to the court to be issued. This means that the court stamps them to show that they have been added to court records. You must file enough copies of each of the documents to serve each of the respondents with their own copy, as well as two copies for the court. The court will give you an issued copy of the application documents. The documents must then be personally served (delivered in person) to the adult and anyone else who is a respondent (named in) on the Notice of Application. Once the application documents have been served, you, or the person who served the documents, must fill out an Affidavit of Service – Form 31.05 under Civil Procedure Rule 31.05, and file it with the court as proof of service.

You also need to make sure a copy of the Notice of Application is sent to other interested persons, including:

- the adult's spouse, parents, children 19 or over, and siblings 19 or over
- a person appointed to make decisions for the adult appointed under the old *Incompetent Persons Act*
- an **attorney** for the adult appointed by a **power of attorney**
- a **delegate** for the adult appointed by a **personal directive**
- the director of a care facility, such as a nursing home, if the adult lives in one.

You must deliver the application documents to these people at least 25 business days before the date of the hearing. Remember to allow for the day when the documents are delivered or sent, the day of the hearing, weekends and holidays.

If you are concerned that someone on the above list should not be given notice of the application ahead of time, you may ask the court for permission not to notify them. You should ask the court about it when you file the application.

The adult or any other person who might be affected by the application may not agree with your application. If they do not agree they may file a Notice of Contest (Chambers Application) with the court (Form 5.04 for Contesting an Application on Notice in Chambers, under Rule 5.04).

### What does a representation application cost?

Going to court nearly always involves costs. These are listed below.

#### Legal fees:

A lawyer will charge a fee to prepare a representation application and appear in court. This work will likely cost \$5,000 to \$6,000. Some lawyers may charge more or less. You can also contact Nova Scotia Legal Aid to see if you qualify for free legal help. Legal Aid is listed in the telephone book under Legal Aid, or go to [nslegalaid.ca](https://nslegalaid.ca). You can apply to court without a lawyer if you choose to or cannot pay a lawyer.

#### Court filing fee:

It will cost \$246.80 (December 2022) to file an application with the Supreme Court of Nova Scotia. This includes tax and the cost of having the document issued (stamped) by the court.

#### Bond:

If you are appointed as a representative, you must pay a bond (collateral) to the Supreme Court, to be held in trust. This is done so that the adult in need of representation is protected financially if

you manage the adult's money or property badly. The bond will be equal to 1.25 times the value of any property you have control over as representative.

If you cannot afford to pay the bond, you can get a guarantor or co-signer to help you pay the bond. This could be another friend or family member, or a surety company. You might not have to pay the bond if you are not granted authority over the adult's financial matters, if there are other safety measures in place to protect the adult, or if the value of the adult's property is worth less than \$3,000. The court may want some other assurances that the adult's financial interests will be protected if their financial situation changes.

### **Vulnerable sector check:**

It costs about \$50 to apply for a criminal record check/vulnerable sector check. Contact your local police or RCMP detachment for information.

This check is only valid if it was done within two months of your court date. Be careful not to get it done too early or you may be required to get the check done again at your own expense.

### **Capacity assessment:**

Most health professionals will charge a fee to do a capacity assessment report.

You may apply to the Public Trustee's Office for help paying some or all of the costs of a capacity assessment. You will have to show that it would be a financial hardship for the adult or for you to pay for it. The Public Trustee's Office may pay up to \$500 for an assessment for personal care or financial matters, or \$700 for an assessment of both personal care and financial matters. The cost of the assessment might be higher than the amount available through the Public Trustee. Talk with the assessor about the total cost before they start.

## Who can do a capacity assessment report?

A capacity assessment report can be done by an approved health professional, including a medical doctor or registered psychologist. The list of approved assessors also includes nurse practitioners or registered nurses, occupational therapists, and social workers who have completed training developed by the Nova Scotia Public Trustee's Office. A list of approved assessors can be found here: [novascotia.ca/just/pto/forms/Adult-Capacity-and-Decision-making-Act-Allied-Health-Roster.pdf](https://novascotia.ca/just/pto/forms/Adult-Capacity-and-Decision-making-Act-Allied-Health-Roster.pdf), or contact the Nova Scotia Public Trustee's Office.

# What rights does an adult have?

In Nova Scotia all adults have the capacity to make their own decisions, unless there is clear proof that they cannot.

Adults have the right to:

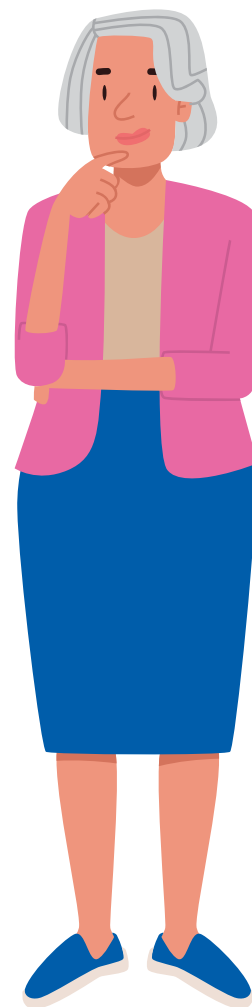
- make their own decisions
- make decisions others might see as risky or unwise
- communicate in whatever way that makes them understood.

An adult has the right to the least restrictive and least intrusive options. For example, an adult should be offered support so they can make their own decisions whenever possible. An adult has the right to use whatever support they need to communicate or make decisions. This might include using an interpreter or having help from a friend, family member, or other support person.

An adult who is the subject of a representation application has the right to have a lawyer. If they cannot afford to hire a lawyer, they can apply to Nova Scotia Legal Aid at [nslegalaid.ca](https://nslegalaid.ca), or call Legal Aid at 1-877-420-6578.

In court, the adult has the right to be at the court hearing, to speak to the judge, and to give information to the court. If the adult does not agree with the judge's decision, they can appeal at the Nova Scotia Court of Appeal.

An adult who needs a representative has the right to apply to the court to review the representation order if their ability to make decisions changes. For example, if an adult can again make their own decisions, they can apply to the court to have the representation order reviewed, and to ask to have their representative decision-maker removed.



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## Does an adult have to cooperate with an assessment?

An adult does not have to take part in a capacity assessment.

If the adult refuses to be assessed or decides to end an assessment in progress, the health professional must stop the assessment and notify the person applying for representation that the adult has decided not to be assessed. Only a court can order a person to participate in an assessment if they refuse to cooperate. Family members and friends cannot make an adult cooperate with an assessment.

However, if a health professional who has been trained as an assessor believes the adult may need a representative, the health professional can assess the adult's ability to make decisions even without the adult's cooperation. The assessor can use information from other sources like family and friends. The assessor can also ask for the adult's personal health information. The assessor might need the adult's financial information to write the assessment report. If so, the person who is applying to be a representative must ask the court for permission to get that information.

When a capacity assessment is done, the assessor must tell the adult the results and give the adult a copy of the report.



# How does representation end?

Representation ends when something important changes for the adult who has a representative, or for the representative.

The adult may regain capacity. This means that they can make important decisions again. This could happen, for example, as they get better after a stroke.

If an adult regains the ability to make decisions, they can apply to the court to have the representative removed. If an adult regains capacity, the representative has the responsibility to apply to court to ask the court to review the representation order and to tell the court of the change in the adult's capacity. If the review finds a representation order is no longer needed, the representative must give financial records to the court and return all possessions to the adult who has regained capacity.

Representation can also end if the representative:

- stops acting as a good representative
- has a mental or physical disability
- moves out of the province permanently
- resigns as representative; or
- dies.

If a representative dies, can no longer act, or refuses to act, a judge will appoint a new representative if the adult still needs one. If there is no back-up representative who can act for the adult, the Public Trustee may act as representative until another can be appointed.

If a representative wants to resign, they must apply to court to ask to be removed from the representation order.

## When should I ask the court to review a representation order or an older guardianship order?

You may have concerns about a guardian, representative, or adult who has a representative decision-maker. If you have, you can apply to the Supreme Court of Nova Scotia to ask a judge to review the representation order.

You can do this if you are an appointed guardian or representative, or an adult who has a representative, or a family member or a friend.

You can ask for a review if you are an adult with a guardian or representative, but you can make important decisions for yourself or believe that the representative is not doing their job right.

# ADULT CAPACITY AND DECISION-MAKING

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Some other reasons to ask the court for a review are:

- If you were appointed as a guardian or representative for an adult and you feel that the adult can make some or all of their own decisions, or something else significant has changed in the adult's life
- If you were appointed as a guardian or representative and you are no longer able to do the job
- If the court ordered you to return for a review after a certain length of time.

For more information, see the Guide to Applying for a Review of a Guardianship Order or a Representation Order on the Nova Scotia Public Trustee website at [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/) under *Adult Capacity and Decision-making Act*, or call the Nova Scotia Public Trustee at 902-424-7760.

## Complaints or concerns about a representative

You can complain to the Public Trustee if you think that a representative is not doing their job right. Anyone can also complain to the Public Trustee if they are concerned about the decisions of a guardian under the *Incompetent Persons Act*. The Public Trustee will look into the complaint and may refer the matter to other agencies, such as police or the Department of Community Services.

You can use an online form to make a complaint respecting a representative on the Public Trustee's website at [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/) under *Adult Capacity and Decision-making Act*, or call the Nova Scotia Public Trustee at 902-424-7760.

Anyone who has concerns about a representative may also apply to court to have a representation order reviewed.

## Do representatives get paid?

As a representative, you may be paid for out-of-pocket costs related to carrying out your duties. This money comes from the money or property of the adult you represent.

You may also ask the court to approve taking a fee from the adult's money or property. You should know that no pay may come from government benefits or support paid to the adult.

You must ask the court to include this compensation when you apply to become the adult's representative. The court may order up to \$15 per hour for managing health care or personal care matters. If you are managing financial matters, the court may allow you to receive up to 2.5 percent of money the adult gets (for example interest earned) while you are their representative.

# Can I manage an adult's finances without becoming a representative?

Sometimes when a person can no longer make their own decisions, someone else will be able to help them. This person is usually a spouse, adult child, or other close family member, or even a close friend.

Informal arrangements work for many people, such as through a joint bank account where the adult and the person helping them are joint account holders. If there are social assistance payments to be managed, an adult may have a trustee assigned by the government Department responsible for those payments.

If informal arrangements work, you do not have to go to court.

If the adult has real estate or financial assets that need to be managed, though, there can be problems. For example, in an informal arrangement, you will not be able to deal with investments unless the person has appointed you as attorney in an enduring power of attorney.

For more information, see the section on *Power of Attorney*.

# Can I make decisions about my finances and personal care before I need a representative?

Yes. While you have capacity to make decisions, you can arrange for someone to manage your financial affairs. This legal document is called an **enduring power of attorney**. You can also name someone to deal with the Canada Revenue Agency on your behalf — more information can be found at [www.canada.ca/en/revenue-agency/services/tax/representative-authorization/overview.html](http://www.canada.ca/en/revenue-agency/services/tax/representative-authorization/overview.html)

You can also arrange for someone to manage your health and personal care if you lose capacity and are unable to make your own decisions. This legal document is called a personal directive.

For more information, see the chapters on *Power of Attorney* and *Health Care Treatment and Consent*.

# Where can I get more information?

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**Nova Scotia Public Trustee:** [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/) under *Adult Capacity and Decision-making Act*, or call the Nova Scotia Public Trustee at 902-424-7760.

**Nova Scotia Legal Aid:** go to [nslegalaid.ca](https://nslegalaid.ca), or call Legal Aid at 1-877-420-6578.

**A lawyer in private practice.** It is a good idea to speak with a lawyer who focuses on estate planning, and if possible a lawyer who has a Trust and Estate Practitioner or “TEP” designation. See the Legal Information Society of Nova Scotia website at [www.legalinfo.org](http://www.legalinfo.org) for information about ways to find a lawyer.

**Supreme Court of Nova Scotia:** go to [courts.ns.ca](https://courts.ns.ca) for court locations and contact information, or look under Courts in the telephone book.

### General legal information

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](http://www.legalinfo.org)

# Dating and New Relationships

Are you dating, moving in with a new partner, or thinking about getting remarried, perhaps following a separation, divorce or death of a spouse? This is a good place to start for answers to some of the questions you may have in starting a new relationship.





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**



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## I am ready to start a new relationship. How can I meet someone?

There are many ways to meet a new person for a potential friendship or intimate relationship. Many older adults meet new friends by joining groups or taking part in activities. Often these activities are offered by community health, municipal recreation programs, cultural, faith or interest-based organizations, or at seniors' homes. Here are some suggestions to help you find out about activities in your area:

- a) ask your friends, family, health care provider, cultural or faith-based connections
- b) search online for local organizations or events using the name of your community and the province of Nova Scotia as part of your search
- c) contact 211 and ask about groups in your area and other resources available for seniors.

Some people meet online. Online dating sites or apps have different purposes. Some aim to help connect people for a friendship, others focus on making a potential love match, and others are about finding a 'no strings attached' sexual encounter.

Some online dating sites or apps are free, others have a fee. Before you pay, read the 'terms of use' carefully to make sure you understand the contract terms and costs (for example, cost for one month or a year) and how to cancel if you wish. Turn off any "auto renew" feature so you are in charge of your money commitment to the site or app.

Sometimes people register with websites who offer to share your information with people near you who have similar interests. You will get potential matches and it is up to you to message a match to introduce yourself. If you give your permission, the potential match may message you first.

Some people use dating or matching apps on their phones or other devices to meet someone. Here the potential match is often based on a photo, with a little background information about the person. If the person seems like a potential match you can 'swipe right' to share your photo and background information. The person may then text you to learn more about you. If someone makes a connection based on your photo and background information then you can choose to text the person or not.



# Online dating

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## What should I know about setting up an online dating profile?

Here are some things you can do to protect yourself when you make an online dating profile:

Find out if the website or app has a privacy policy. What will the company do with your information and who do they share it with? Can you limit the information they share? Who can you contact if there is a problem? How do you report it if you are suspicious about someone who is on the website or app?

- Speak with someone you trust about the culture of using matching apps to help understand how it works and the expectations of those who prefer one app over another. What are users looking for and is that what you are looking for too?
- Do not give out your home address, workplace, phone number, or other private information in your profile
- Look at other profiles for people who are using the website or app and, if reasonable, use their profile as a template for your profile
- If you choose to share a photo consider what other information is in the photo before you upload. For example, does the photo show your house with street number. Does it show other people such as grandchildren?
- Ask someone you trust to review your profile and make sure that it tells a story about you that you want to share with other people and does not reveal private information.
- You control who you communicate with and what information you share with other people about yourself and your family. Even after you make a connection wait for the friendship to grow before you share a lot of personal information. For example, don't share your home address or home telephone, or details about your children and family unless you are sure it is safe and you feel comfortable providing those details.

## Safety and online dating

While many people meet romantic partners online, there are fraudsters who try to take advantage of these situations. Someone you meet online may not be who they say they are. A fraudster may create a fake online identity to trick someone into providing personal information. This is called “catfishing”.

Do an online search for other information about the person, using their name, recent or past places they lived, worked etc. Do a search for their profile on social media like Facebook and Instagram. See if the information they have told you is consistent with your research.

## DATING AND NEW RELATIONSHIPS

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Do not reveal too much personal information until you get to know the person better.

- Never send money or give information about your finances.
- Use a cell phone number or a service like Google Voice. Do not give out a home phone number that is listed in the phone book because the person can search it to find out where you live. Do not give out a work number because the person can search it to find out where you work.
- If you are comfortable, use a video chat such as Facetime or Zoom to meet the person virtually before meeting in person.

Many public libraries and community centres in Nova Scotia offer free computer courses to help you learn more about using technology and the internet. You can also go to [getcybersafe.gc.ca](http://getcybersafe.gc.ca) under 'Seniors Online' for more information about staying safe online.



### Safety steps if you are meeting someone for the first time

Until you get to know your new friend better, here are some things you can do to help you stay safe:

- Do your research to find out if the person is who they say they are.
- Consider going out with a group of friends.
- Arrange to meet in a public place such as a café. Stay in public.
- Stay sober.
- Suggest a morning or early afternoon meeting during the day when people are more likely to be around you.
- Do not offer to pick the person up in your car, and do not arrange to have them pick you up at your home.
- Tell someone where you are going and arrange to call that person when you get home.
- Do not tell your new friend about your finances.

- Do not lend money.
- Be wary if the person tries to talk you into investing in a scheme.
- When together, don't give them your phone or leave your phone where they could access it. The person could change settings on your phone – for example there are apps on phones that show your location and in the app you can give permission for others to get your location information directly from your phone. If the person has permission they can know where you are throughout the day. If you are worried the setting has been changed on your phone go to your carrier's kiosk at a mall or store and ask the employee to check your phone for you.
- If you decide to meet in-person, meet in a public place. Trust your instincts. If the person makes you uncomfortable or unsafe, or asks too many personal questions, end the conversation and leave. Some people feel they must stay on the phone or continue an in-person meeting even if they are not enjoying themselves or feel uncomfortable or unsafe. It is okay to say you need to go. Depending on how you feel, you can try meeting the person another time, or simply say the friendship is not working for you. You do not need to explain why you are ending the friendship. If the person does not respect your decision, you can block their number, refuse to answer their calls, walk away if you see them in public. If you are in danger call the police. If you are not sure if you are in danger talk to someone you trust (for example, police non-emergency line, a transition house, victim services).

## Intimate relationships

### What do I need to know before getting involved in a more intimate relationship?

When starting a new relationship, it is important that both people are open and honest about what they are looking for in a partner. Some people may be interested in starting a relationship that includes sex, while others may be looking for companionship and nothing more.

Ideas about consent and sex in a relationship may have changed since the last time you dated. Consent is part of a healthy relationship. Sexual activity without consent is against the law. It is important to understand what consent is and to be clear about giving or not giving consent.

Consent means freely and voluntarily agreeing to take part in sexual activity, like touching, kissing, or having sex. There must be consent to engage in sex or sexual activity. Consent must also be ongoing. Consent must be clearly and freely given at all times and for every sexual activity between the people engaged in the activity. Consent means talking openly with the other person to make sure they want to engage in any kind of sexual activity and repeating this conversation if there is any sign that the other

## DATING AND NEW RELATIONSHIPS

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person wants to stop the sexual activity. Anyone can say no to any activity at any time.

Words or actions can show that a person does not consent to sexual activity. Actions like struggling or trying to leave a situation show that a person does not consent. Agreeing to sexual activity on one occasion does not mean that a person agrees to that activity again in the future. A person who is impaired by drugs or alcohol may not be able to give consent or continue to give their consent.

Sexual assault is a sexual act or touch that you do not consent to. This includes kissing someone or touching their body parts without their consent, forcing someone to have sex (also called rape), or torture of a person in a sexual way.

Sexual assault is a crime even if you are not physically hurt.

You can find out more about consent at [breakthesilencens.ca](http://breakthesilencens.ca). If you have been involved in sexual activity where you did not give your consent there are supports available to help. You can go to [breakthesilencens.ca](http://breakthesilencens.ca) to find out about supports near you.

### **What do I need to know about sexually transmitted infections?**

If you are thinking about sex with a new partner, talk with your partner about safe sex. Sexually transmitted infections (STIs) are becoming more common among older adults in Canada, but you can protect yourself. You can talk with your health care provider or do some research. Go to [www.shns.ca/](http://www.shns.ca/) (Sexual Health Nova Scotia) or [811.novascotia.ca](http://811.novascotia.ca), or call 8-1-1. 811 is a confidential health line that provides access to registered nurses 24 hours a day, seven days a week.

### **What can I do if someone is posting intimate photos or making nasty comments about me on social media?**

The [Intimate Images and Cyber-protection Act](#) aims to protect people from being bullied online, or from having private intimate images of themselves shared without their consent. Cyber-bullying is when someone uses electronic communication, like email, text messaging or social media, to harm your health or well-being. They might be doing this on purpose to hurt you or they might not care about hurting you.

Examples of cyber-bullying:

- creating a website, blog or profile that takes your identity
- sharing sensitive personal information or breaking your confidence
- posting private intimate images without your consent
- threatening, intimidating, harassing or scaring you online
- making false statements about you
- communications that are grossly offensive, indecent, or obscene
- encouraging you to commit suicide.

Cyber-bullying can also include encouraging or forcing someone else to do these things.

The law also protects you if someone distributes a private intimate image of you, such as a photograph, film, or video, without your consent. An intimate image is one that is private, shows sexual activity or nudity or partial nudity. It is an image you have good reason to think will stay private.

For example, without asking you and to try to hurt you, your former partner posts a private, sexually explicit, intimate picture of you on Facebook that you had good reason to think was going to stay private.

A cyber-protection order can order the person to stop the bullying and/or sharing of images, and do things like:

- stop the person from contacting you
- order that they take down or disable access to an intimate image or communication about you; and/or
- award damages to the victim.

You apply to the Supreme Court of Nova Scotia for a cyber-protection order. You can apply with a lawyer's help or on your own. A parent or guardian of a victim under the age of 19 can also apply to Supreme Court for a cyber-protection order. You can get information about applying to the Supreme Court of Nova Scotia for a cyber-protection order at [courts.ns.ca](https://courts.ns.ca).

Cases under this law have been heard at the Supreme Court in Nova Scotia. When cyberbullying is found the court may order the offender(s) to pay money to the victim. The amount could be significant.

Nova Scotia's CyberScan Unit oversees Nova Scotia's *Intimate Images and Cyber-protection Act* and can give you help and information, including about applying to court for a cyber-protection order. Contact CyberScan at [novascotia.ca/cyberscan/](https://novascotia.ca/cyberscan/) or call 902-424-6990 or 1-855-702-8324.

# New relationships and planning for the future

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Many seniors are dating, sharing time between each other's homes, moving in together, or planning to get married. If you are thinking about moving in with another person in a common law relationship, or are planning to get married, it is important to have an open and honest discussion with your partner about your financial future together.

Here are a few suggestions, depending on your age and health:

- Are there any agreements or court orders that require one or both of you to pay spousal or child support to another family? If so, is there an end date?
- What is each person's monthly and annual income – pension (private, government), dividends, investments, etc. How secure is each source of income?
- Make a list of each person's assets and debts, including any assets or debts with other people (such as children)
- Are there any outstanding property issues with a former partner?
- Where will you live and how will the bills be paid?
- Is there a current or future expectation to care for another person such as an aging parent or vulnerable child?
- What will happen if one person becomes ill or unable to provide their own personal care?
- What will happen if one person has to move to a senior's home or long-term care facility and the home where you live at is not in your name?
- Does one or both of you have medical and dental coverage? If so, is it possible to name the other partner as a beneficiary on the plan? What is the cost to do so?
- Does one or both of you have life insurance? Who is the current named beneficiary? Is it possible to change this in the future?



- If you separate how will you share your property, if at all?
- If you separate will one person pay support to the other?
- If you have been together for a while – what are your estate plans?
- Other issues that you need to know to make plans for your future (have these ready in advance of your discussion)
- Depending on your situation it is a good idea to speak with a lawyer about your rights and responsibilities before you move in with someone or marry.

### **I've been dating someone new. Do they have a right to my property or money?**

No. Dating someone does not give them any rights to your property. You do not have to support each other financially.

### **I am dating someone and they asked me to co-sign a loan. What should I think about?**

Talk to a trusted friend, financial advisor, or relative if the person you are dating asks you to loan money to them or someone else, or to share in the cost of a major purchase, or sign as a co-signor on a joint lease or loan.

It is always best to have a written agreement before going into debt or loaning money to anyone. An agreement may include:

- the name(s) that will be on the title papers for the item (for example: registration, deed)
- the name(s) that will be signed on the loan paperwork between you and the person and/or with the bank
- who will be responsible for upkeep and repairs, insurance, and loan payments for the item?
- is there any security? For example, what guarantee do you have that you will be paid back?
- under what circumstances the item may be sold and how the profits or losses will be shared.

It is always a good idea to speak with a lawyer or financial advisor before you agree to loan money to anyone, or make a major purchase with anyone.

## DATING AND NEW RELATIONSHIPS

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### How will my rights change if we decide to live together, and do not get married?



Being in a common law relationship is not the same as being legally married. For example, unlike married couples or registered domestic partners, at the time of this writing, common law partners do not have an automatic right to half of each other's property if they separate or if one of them dies without a will.

The length of time it takes to establish a common-law relationship is different for different purposes. For example, the Canada Pension Plan says that to be a common-law partner you must live with your partner for at least one year. Some other laws do not consider you to be in a common-law relationship until you have lived with your partner for two years. If you live with a partner and depend on them for financial support, they may have a legal duty to support you if the relationship ends. But there is no guarantee that this will be the case.

Generally, when a common-law relationship ends, each partner keeps what they brought into the partnership. Things you bought together should be shared. However, in real life, it is not always easy to sort out who paid for what.

If you and your partner cannot agree on how to split up your property when you separate, you may apply to the Supreme Court Family Division for a court order to divide the property. In every case, you should have legal advice about property division and any claim for support.

Estate law does not give the same rights to common law partners as it does to married spouses and registered domestic partners.

If you die without a will, or you have a will but it is not legally valid, your property goes to the people considered to be your nearest relatives as listed in the [Intestate Succession Act](#). The *Intestate Succession Act* lists these people in order. Intestate means “without a will.”



**The *Intestate Succession Act* distribution list does not include your common-law partner. Your common law partner will not automatically inherit your property or money that is only in your name. Your common-law partner may have to go to court to make a claim on your estate and may not be successful. The distribution list does include your married spouse, or your partner if you have a registered domestic partnership.**

If you plan to move in with your partner, you should talk to a lawyer about how this might change your situation. It is a good idea to review your estate plan, including your will, the names of your beneficiaries, personal directive, power of attorney. It's also good to think about writing a cohabitation agreement.

You should review your estate plan with a lawyer again if you get married.

For more information on estate planning see the chapters on *Wills, Health Care Treatment and Consent, and Powers of Attorney*.

If you are married or you are considering marriage then it is important to know that married people have different rights. You can find more information about family law rights and responsibilities for married and common law couples at [nsfamilylaw.ca](https://nsfamilylaw.ca) or [legalinfo.org](https://legalinfo.org).

## What is a registered domestic partnership?

Two people who live in a common-law relationship can register their relationship with the province. This is called a registered domestic partnership. It gives common-law partners many of the same rights as married spouses.

You can find more information on registered domestic partnerships at [novascotia.ca/sns/access/vitalstats/domestic-partnership.asp](https://novascotia.ca/sns/access/vitalstats/domestic-partnership.asp)

## Relationships and finances

### If we move in together but do not get married, who owns the things we buy together?

If you and your common law partner buy something together, such as furniture or a car, you both own it. If you buy something on your own, it remains your property. Keep proof of payment (such as receipts) and write down who paid for the item. If you own a home or land, or have investments or other significant assets, you may want to have a cohabitation agreement prepared.

### How can I protect my property after we move in together or get married?

You should ask your lawyer about a cohabitation agreement. A cohabitation agreement is a written agreement between you and your partner that sets out your rights and responsibilities to each other. This can include who owns property and expensive goods, how property will be divided if you separate, and what responsibilities you have to support each other.



## DATING AND NEW RELATIONSHIPS

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If you decide to get married, you could have a marriage contract. This is an agreement between two married people that sets out who owns what property. This type of contract is often called a pre-nuptial agreement, or 'pre-nup' for short. Most cohabitation agreements become marriage contracts if the parties get married, but the agreement must be clear that the parties wanted this when they signed the cohabitation agreement.

It is not a good idea to use a do-it-yourself kit to do a cohabitation agreement or marriage contract. If you do it without lawyers you may permanently give up property or your rights to property or support in the agreement. You need a lawyer to write your cohabitation agreement or marriage contract. Your lawyer will explain how your agreement or contract will affect your rights and responsibilities. You should each talk to a different lawyer.

It is also important that you each have a will and a good estate plan, even if you have a cohabitation agreement or marriage contract.

### **How should I protect myself if my partner and I have a joint bank account?**

Many couples keep some of their money separate by having their own personal accounts as well as a joint account. They use the joint account to pay household bills and purchases they make together.

Joint tenancy is the most common type of joint account for couples. This means the account holders have equal right to use and control the money in the account. At any time either person may deposit or take out some or all of the money from the account. The joint owners are also responsible for overdraft and other bank fees for the account. When you separate or divorce, the money must be divided equally, even if one person contributed more or less than the other. When one of the owners dies, the other spouse automatically owns all the money in the account. This is called right of survivorship.

Talk to your bank if you want to have a joint bank account with another person and you do not want to have joint ownership of the money, or joint responsibility for overdraft and other bank fees.

It is also a good idea to talk with your bank about what will happen to the money in the joint account if one of the joint owners dies. Make sure it is what you want. For example, will the surviving owner continue to have access to the account? Will the surviving owner automatically own all the money in the account? Will the account be frozen by the bank until the estate is dealt with? What will happen to any automatic deposits into the account and/or bill payments?

If you have or want to set up a joint account with someone other than your spouse or minor children, such as with an adult child, it is a good idea to see a lawyer who does estate planning. A lawyer can help you make sure your estate is set up the way that you want, including who will benefit from a joint account when you die.

The Financial Consumer Agency of Canada has more information about Joint Accounts, and “What every older Canadian should know about: Power of attorney (for financial matters and property) and joint bank accounts.”

### Will I be responsible for my partner’s debts?

Whether you are married or in a common law relationship, you are only responsible to creditor(s) for another person’s debts if:

- your name is on the contract, like a car or apartment lease
- you co-signed a loan for your partner or spouse
- you signed a contract agreeing to pay the loan if they could not.

However, if your spouse applies to the court for a division of debts after you separate, the court may order you to pay something if you can. You and your former spouse may also agree to share responsibility for debts after you separate.

If your partner or spouse dies, their debts must be paid from any assets they owned when they died. This may include their share of an asset they owned with you or someone else. If they did not own enough property to pay off the debt, the lender must write off the debt.

### Will I need to change my will if we move in together, get married, or get divorced?

You should look at your will from time to time to make sure it still says what you want and that it still applies to your situation.

If you get divorced, your will as a whole is still valid, but any gifts to your ex-spouse will not be valid. In this situation, the gift will go to any other person you have named. You should update your will if you get divorced. You may also wish to make different arrangements for the people you want to inherit if



## DATING AND NEW RELATIONSHIPS

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some of the property you intended to leave them has been divided with your ex-spouse.

If you get married, you will need to make a new will. Any will you made before your marriage will become invalid when you marry unless the will says that you plan to marry the person named in your will.

If you move in together and you want your common-law partner to have something of yours when you die, you must update your will or make a new will.

Do not change your will by marking or crossing out words in the will. This may cause significant problems. It is much safer to make a new will. For more information, see the Wills section of this book.

## Where can I get more information?

**Family law information:** [www.nsfamilylaw.ca](http://www.nsfamilylaw.ca) or [www.legalinfo.org](http://www.legalinfo.org)

**CyberScan:** for information and help if you are being bullied online, or by text or email. Contact CyberScan at [novascotia.ca/cyberscan](http://novascotia.ca/cyberscan) or call 902-424-6990 or 1-855-702-8324.

**Financial Consumer Agency of Canada:** Information about credit and debt, including rights and responsibilities of joint borrowers and joint accounts. Go to [canada.ca/en/financial-consumer-agency.html](http://canada.ca/en/financial-consumer-agency.html)

**A lawyer in private practice:** It is always a good idea to speak with a lawyer about legal issues such as a cohabitation agreement, marriage contract, pension law, property division, separation or divorce, and estate planning. See the Legal Information Society of Nova Scotia website at [www.legalinfo.org](http://www.legalinfo.org) for information about ways to find a lawyer.

**Nova Scotia Legal Aid:** go to [nslegalaid.ca](http://nslegalaid.ca), or call Legal Aid at 1-877-420-6578.

**Supreme Court of Nova Scotia:** go to [courts.ns.ca](http://courts.ns.ca) for court locations and contact information, or look under Courts in the telephone book.

### General legal information

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](http://www.legalinfo.org)

# Grandparents & Grandchildren

Grandparents sometimes lose contact with their grandchildren. This can happen for many reasons, such as a family dispute, separation, divorce, or remarriage.

This section gives legal information for grandparents who want to know how they may be able to reconnect or stay in contact with their grandchildren.





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**



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# D

## Do I have a right to see my grandchild?

Most of the time, grandparents have a good relationship with their family and can spend time with their grandchildren through one or both parents. But the law does not say parents must allow their child to spend time with their grandparents.

## What legal words describe parenting and spending time with a child?

### Custody

An old term that meant having the responsibility to care for the child, and to make the major decisions about the child's health, well-being, and upbringing. The term custody is no longer used in the [Parenting and Support Act](#) (NS) or [Divorce Act](#) (federal) and has been replaced with the terms 'decision-making responsibility' and 'parenting time'.

### Decision-making responsibility

Decision-making responsibility is a general term describing who is responsible to make significant decisions for and about a child. For example, this includes decisions about a child's health, education, culture, language, religion, spirituality, and significant extracurricular activities. This has traditionally been called 'custody'. The term 'custody' is no longer used.

### Parenting time

Time a child spends with a parent or guardian because of a court order or agreement. It is a term used in both the *Parenting and Support Act* (NS) and the *Divorce Act* (federal). The term 'access' is no longer used.

### Contact

Time a child spends with someone other than their parent or guardian because of a court order or agreement. This can be a grandparent, or anyone else who is close to the child. It is a term used in both the *Parenting and Support Act* and *Divorce Act*. Contact may sometimes also be called access although the term 'access' is no longer used in the law.



## Interaction

Communicating with a child outside of parenting time or contact. It includes:

- phone calls, emails, or letters
- sending gifts or cards
- attending the child's school activities or other activities
- receiving copies of report cards or school photos
- video chats with the child.

An agreement or court order that uses the terms 'custody' or 'access' continues until it is changed ('varied') with a new agreement or court order. You **do not** need a new agreement or court order just because the language used in the law has changed.

## Do I have custody of my grandchild if my teenage child becomes a parent?

No. The person who gives birth is the parent of the child, regardless of the birth parent's age.

If your child is under the age of 19 and still lives at home you have a legal duty to support your child.

If your child is struggling to parent as a young person and wishes to give you authority over their child then you can raise your grandchild without any formal agreement or court orders in place.

If you want to have a formal agreement or court order in place to confirm your decision-making authority regarding your grandchild, you may apply to court. To make an application to court you first need to ask for the court's permission to go ahead with your application. This is called asking for the court's '**leave**'. You would have to provide a reason(s) why it is in the best interests of your grandchild to proceed. You would also have to provide notice of your court application to the child's other parent. That person would be able to request decision-making authority (custody) of your grandchild and would be considered first in line to raise the child, unless there are reasons why that would not be in the child's best interests.

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## Can I apply to court for decision-making responsibility or to spend time with my grandchild?

You should avoid involving the court if possible. If this is not possible, you can apply to court.

If you wish to apply to have the decision-making authority ('custody') of your grandchild, or parenting time ('access'), you must ask for the court's **leave** under the *Parenting and Support Act* or the *Divorce Act*.

Leave is permission from the court to make an application. When you ask for leave, you must explain to the court why you are asking to have decision-making responsibility over your grandchild, and what role you play or have played in your grandchild's life.

Grandparents applying for contact time with a grandchild or interaction under the *Parenting and Support Act* do **not** need to ask for leave.

Grandparents applying for contact under the *Divorce Act* must ask for leave.

It is always a good idea to talk to a lawyer if you are thinking about going to court.

## What are some ways to reach an agreement without court?

### Negotiation

A less formal process of discussing the issues the child's parents and grandparents do not agree on to try to reach an agreement. You can try to negotiate with your grandchild's parents on your own or with someone else's help, such as a lawyer.

### Mediation

An alternative or assisted dispute resolution (ADR) process where a mediator helps parties reach an agreement. A mediator is a neutral, independent, and objective third party who is trained in ADR.

If the child's parents and grandparents cannot reach an agreement on decision-making responsibility (custody), contact, or interactions, mediation is an option. A mediator will meet with the people involved, discuss the issues, and help them come to an agreement. Mediation is voluntary, and everyone must feel comfortable with the process.

Private mediation services are listed online or in the telephone book. You can also find a mediator through Family Mediation Canada (fmc.ca). You might be referred to a mediator through the family court process.

### Collaborative law

A process where lawyers trained in collaborative law help participants work together to reach an agreement. Everyone must agree at the beginning to work together without going to court. You can find a trained collaborative family lawyer and get more information about collaborative family law online at [collaborativefamilylawyers.ca](http://collaborativefamilylawyers.ca).

### Joint family counselling

May be an alternative to a court or negotiated settlement. This gives both sides an opportunity to air out their differences and to help each other understand why a relationship between a grandparent and a child is being blocked.

No matter what approach you take, it is always a good idea to get legal advice if you are trying to reach an agreement. If you reach an agreement, it is important to get independent legal advice from your own lawyer before you sign the agreement.

## How do I apply for decision-making responsibility, contact, or interaction?

You can start an application for decision-making responsibility, contact, or interaction with a lawyer's help, or on your own. If you cannot afford a lawyer, you can apply to Nova Scotia Legal Aid on their website, [nslegalaid.ca](http://nslegalaid.ca), or contact your nearest [Legal Aid office](#). Legal Aid is listed under Legal Aid in the telephone book.

Or you can [hire a lawyer in private practice](#) who does family law.

If you do not have a lawyer, you can ask court staff for information about the documents you must file, or go online to [nsfamilylaw.ca](http://nsfamilylaw.ca) for information about where to start. You can also make an appointment to speak with the Summary Advice Lawyer. The Summary Advice Lawyer provides free, brief legal advice to anyone who has a family law issue but who does not have a lawyer. There are no income criteria. Call the family court for contact information, or go to [nsfamilylaw.ca](http://nsfamilylaw.ca).

**Intake** is a session at family law courts where you will get information about starting a court application or settling a family law matter outside of court. Intake can happen at the court or online. You must do an intake session before court staff will look at your application.

Once you have given the court your application and you have had an intake session, you may take part in **conciliation**. This is a form of dispute resolution. A court officer will help decide what issues you need to sort out. They will make sure everyone gives the court the needed documents. And they will help negotiate a settlement if they can. The conciliator may speak with both sides together or separately.

If you cannot settle your matter, you can ask the court for a formal hearing.

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## How does the court decide what is in a child's best interests?

To decide what is in a child's best interests, a judge will think about:

- the child's needs
- the parents' or guardians' ability to care for the child
- how the parents or guardians care for the child
- the plan proposed for care of the child
- the child's cultural, linguistic, religious, and spiritual heritage
- what the child wants, if appropriate
- the relationship between the child and their parents or guardian
- the relationship between the child and their grandparent(s)
- how well the adults in the child's life talk with each other
- whether there is family violence and its effects on the child.

In cases about contact or interaction with grandparents, a judge will also think about:

- whether the child's parents or guardians are willing to support contact
- whether an order for contact is needed to allow the child to see their grandparent(s)
- if there is family violence and its effects on the child.

## Where do I apply to court?

Generally you must apply to the [family law court closest to where the child lives](#).

## Is there financial support for grandparents with decision-making responsibility or care of a child?

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Anyone, including a grandparent, who has decision-making responsibility for a child can apply to court for [child support](#). There is information about child support at [nsfamilylaw.ca](https://nsfamilylaw.ca). You can also talk to a lawyer about how to apply for child support.

Grandparents who care for their grandchildren may also qualify for government tax benefits, like the [Canada Child Benefit](#). You can get information about the Canada Child Benefit from the Canada Revenue Agency, at [canada.ca/en/revenue-agency.html](https://canada.ca/en/revenue-agency.html) or by calling 1-800-387-1193.

## What if the person with care of my grandchild will not follow a court order for contact?

If the person with care of your grandchild prevents your court ordered contact or interaction, you should first try to work out an arrangement with them. You should avoid involving police or the court if possible. If this is not possible, you can apply to court to take steps to enforce the order. It is best to [speak with a lawyer](#) before you do that. You can ask a lawyer about [section 41 of Nova Scotia's Parenting and Support Act](#), which is a part of that law that may help with enforcement. You may also wish to try family counselling to find out why the parent is preventing your contact with the child.



### **Can I apply to change a court order?**

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You can apply to court to ask the court to vary, or change, a court order if there has been an important change in circumstances since the court order was made.

This could include:

- a change in parenting arrangements
- an address change affecting your ability to visit your grandchild
- a change in your grandchild's schedule that affects contact or interactions.

### **What should I do if I suspect a child is being neglected or abused?**

If you believe that any child is being neglected or abused, you have a legal duty to report it to the Nova Scotia [Department of Community Services](#). Contact the department by [getting in touch with the office nearest you](#), or use these toll-free numbers:

- Weekdays, 8:30 am–4:30 pm: 1-877-424-1177
- Weekends or holidays: 1-866-922-2434

### **If my grandchild is taken into care by child protection, what will happen next?**

If a child is abused or neglected, the Department of Community Services will try to keep them in their home and offer services to the parents and child. However, this is only if the child is safe. If a child is in serious risk of harm, the Department may remove a child from the home and take the child into care.

'Taken into care' means the child is removed from the home and is cared for in a foster family's home or in another place. A 'plan of care' is the Nova Scotia government's term for arrangements that are made about the child. If a child is taken into care, the Department must take the matter to court for a judge to review. This must happen within five days or the child will be returned to their home.

When the Department decides that a child will be placed in care, the law about child protection ([Children and Family Services Act](#)) says that the child must be placed with a relative if possible. Grandparents are

often asked to care for children while their parents work to address parenting concerns. Sometimes this is for a short period of time, other times it may become a permanent situation.

If there are significant concerns then the child protection case may continue for between 18 months and 2 years to allow enough time for parents to address the parenting concerns. If the parents are unable to address the concerns within this timeline then the court must place the child into permanent care, unless there is another plan to consider. Often that plan includes a grandparent permanently caring for a child.

A child who has been placed by court order in the permanent care of the “Minister of Community Services” may be adopted if the court agrees that is in their best interests. Generally the Department of Community Services would have to approve your proposal to adopt your grandchild. Once a child is adopted, the Department of Community Services is no longer involved, and the parents who adopt the child will make decisions about contact with the child’s birth family.

You can get more information about child protection online at [nsfamilylaw.ca](https://nsfamilylaw.ca), or contact Nova Scotia Legal Aid or a lawyer in private practice.

## Where can I get more information about grandparents and family law?

### **Nova Scotia Legal Aid:**

Your local Legal Aid office is listed under Legal Aid in the telephone book or you can find them online at [nslegalaid.ca](https://nslegalaid.ca).

### **Family law lawyer in private practice**

A lawyer in private practice who does family law. Go to [legalinfo.org](https://legalinfo.org), under Lawyers and Legal Help, for ways to find a lawyer.

### **Family Law Nova Scotia**

The website at [nsfamilylaw.ca](https://nsfamilylaw.ca) has information for grandparents at [www.nsfamilylaw.ca/children/information-grandparents](https://www.nsfamilylaw.ca/children/information-grandparents)

### **NS Child Welfare Services**

Online: [novascotia.ca/coms/department/contact/ChildWelfareServices.html](https://novascotia.ca/coms/department/contact/ChildWelfareServices.html)

### **Advocacy and support**

You can find information about grandparents advocacy and support groups online or by contacting [NS 211](https://ns211.ca).

## D

### General legal information

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](http://www.legalinfo.org)

# Health & Other Personal Care Decisions

It is a good idea to think about who you want to make health and other personal care decisions for you if you could not make these decisions yourself. Anyone could lose this ability, even for a short time.





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### E

A **personal directive** lets you choose someone to make health and other personal care decisions for you if you cannot make them yourself. You can set out your instructions, wishes, values and beliefs about personal care in the future.

If you think ahead about what kinds of care you might want, you have a better chance of getting that care. You can also make it easier for the people who make those decisions for you.

Advance planning is important for all stages of life. Personal directives help to make sure the decisions you would want are made when you cannot make them yourself, even for a short time. They are also intended for permanent incapacity, such as a brain injury where you may live in the community for many years with assistance. They are also intended for use at the end of your life. A personal directive helps you get the level of comfort and care you want.

This chapter can help you start to answer some of your questions about personal directives, health and other personal care decision-making.

If you wish you can make your personal directive online at [legalinfo.org/personaldirective](https://legalinfo.org/personaldirective). Or you can download written instructions for writing a personal directive, and a personal directive form, at [www.legalinfo.org/wills-and-estates-law/health-care](https://www.legalinfo.org/wills-and-estates-law/health-care). You can also find information about personal directives on the Nova Scotia Department of Justice website at [www.novascotia.ca/just/pda](https://www.novascotia.ca/just/pda), and in the resource list at the end of this chapter.

Making your personal directive is part of being ready for the future. Two other documents are also important: your will and your enduring power of attorney. See the chapters on *Wills* and *Powers of Attorney* for information about those documents.

## What are personal care decisions?

**Personal care** decisions are decisions about what a person will eat or drink, where they will live, what they will wear, what activities they will do, and what support they will need to live. It also includes what **health care** treatment they get, such as tests, procedures, or services to keep them healthy.

## What is health care?

**Health care** is any examination, procedure, service, or treatment that is done for a health-related purpose, including a therapeutic, preventative, palliative, or diagnostic purpose. It includes a course of health care or a care plan.

# Personal directives and delegates

## What is a personal directive?

A **personal directive** is a legal document that lets you name another person to make personal care decisions for you when you cannot do that for yourself. This person is called a **delegate**. You may hear them referred to as a delegate, proxy, substitute decision maker, surrogate, or statutory decision maker. In your personal directive you can set out your instructions, wishes, values and beliefs about personal care in the future.

Your personal directive will be used only when you cannot make your own personal care decisions. For example, if you were in a coma. That is called “losing capacity.”

Your personal directive must be in writing, and you must sign it. A person who is **not** your delegate or their spouse must witness your signature and must be there with you when you sign.

A personal directive is one of the greatest gifts you can give yourself and those who care about you. It can help to make sure that you get the care you want. It can help the people who care about you by letting them know what kinds of care you want. Writing things down helps make sure what you want is clear to everyone.

The people who will most likely make your personal care decisions when you cannot are the people who care most about you — your family and friends. But family members may not know what care you want. A personal directive helps address this problem. As well, if family members disagree about care choices, having your wishes written down can let health care workers care for you as you want to be cared for.

You should make a personal directive while you can still make decisions for yourself. You cannot know how and when illness or an accident will take away your ability to make personal care decisions for yourself.



### Who makes health and other personal care decisions for me if I cannot?



Everyone in Nova Scotia has the right to make decisions for themselves about health and other personal care, as long as they have the capacity to do so. Capacity is the ability to understand information that you need to make a personal care or medical decision. It is also the ability to understand what can happen as a result of making a decision or not making a decision.

You can prepare for a time when you may not be able to make health or other personal care decisions for yourself by writing a personal directive while you are well. In your personal directive you may name a delegate to make personal care decisions for you. Your personal directive will be used only when you cannot make your own personal care decisions.

If you have not named a delegate to make health care decisions for you, your health care provider will ask a “statutory decision maker” to make certain personal care decisions for you. A statutory decision maker is someone chosen under the law rather than someone you choose. To find a statutory decision maker, your health care provider will start at the top of the list below and work their way down until they find someone who can fill this role:

- your spouse (including legally married, common law, registered domestic partner)
- your child,
- a parent,
- a person who stands in the place of a parent,
- a brother or sister,
- a grandparent,
- a grandchild,
- an aunt or uncle,
- a niece or nephew, and then
- other relatives.

A statutory decision maker must be an adult who has been in personal contact with you over the past year and who is willing to make decisions on your behalf. They would have the power to make many decisions for you, including accepting an offer to place you in a continuing care home or to receive home care services.

There is another way that someone could be named to make health or other personal care decisions for you when you cannot do it. A relative or friend can apply to court to be named as your representative. The court might allow them to give consent to health care for you when you do not have a valid personal directive. Before naming a representative, a judge must find that you are not able to consent and that the best thing for you is to have a representative. For more information, see the Adult Capacity and Decision-making chapter in this book.

In very unusual cases there is no delegate, representative, or other person who can make a decision for you. In these cases the Nova Scotia Public Trustee may be asked to do so, and might agree to take

on this task. The Public Trustee is a government office that manages the affairs of some people who cannot do it for themselves. Contact the Nova Scotia Public Trustee for more information or see the Public Trustee's website at [www.novascotia.ca/just/pto](http://www.novascotia.ca/just/pto).

### **Naming someone to make personal care decisions for you**

A personal directive lets you name someone you trust, your delegate, to make health and other personal care decisions for you.

You may name any person to be your delegate who is:

- 19 years of age or older (unless they are your spouse) and
- able to make important decisions.

Your delegate does not have to be related to you.

The law allows you to name more than one person to act as delegates for you. But in most cases it is best to name only one delegate. If you name more than one delegate, you must clearly give each delegate authority for different matters. This makes sure that only one person can make decisions in any area and avoids conflicts between decision-makers. For example, you can name your spouse to make all health care decisions for you and name your sister to make all decisions about continuing care home placement. You cannot name your spouse and sister to both make all health and other personal care decisions for you.

You can also name a person or people who you do not want to be asked to make health and other personal care decisions for you.

Talk with your delegate about your wishes for your health and other personal care. Here are a few questions to think about in choosing a delegate:

- Do I trust this person to make health and other personal care decisions for me?
- Will this person respect my values and beliefs and act on my instructions and wishes, not on their own?
- Does this person know me well enough to make decisions for me?
- Can this person communicate clearly?
- Can this person make difficult decisions in stressful situations?
- Will this person speak for me if I cannot make health and other personal care decisions for myself?

You may also name another delegate who can make decisions about your personal care if your delegate cannot act for any reason, even for a short time. This person is called an alternate delegate.

## HEALTH & OTHER PERSONAL CARE DECISIONS

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For example, your delegate could be travelling in another country or unavailable for some other reason. In that case, your alternate delegate could make decisions for you. Your delegate could make decisions for you once they returned to the country or they could be reached. You may also name more alternate delegates to make decisions in case your first alternate cannot. An alternate delegate must be at least 19 years old (unless they are your spouse) and able to make important decisions.

The people giving you health care would need to respect any instructions in your personal directive if they could not reach your delegate or alternate delegate.

You can choose not to name a delegate in your personal directive. You can just leave a statement of your instructions, wishes, beliefs, and values about your personal care, directions on who to consult about your care or who to notify about your circumstances.

But what if you do not name a delegate and do not leave instructions or wishes that are clear and related to a decision that must be made? Your care providers will turn to a statutory decision maker to make certain personal care decisions for you. See the list of who can be a statutory decision maker under the question: “Who makes health and other personal care decisions for me if I cannot?”

Your personal directive could include instructions for your care, directions on who to consult about your care or who to notify about your circumstances, and how a delegate may be compensated for taking on this role.

Your delegate must follow any instructions or wishes you may have written in your personal directive. However, they can also consider any conversations with you since you wrote your personal directive. If the delegate believes that certain medical advances or technologies would have changed your instructions if you had known about them, they should think about this when making decisions about your care.

If you do not leave any instructions or wishes, your delegate must make decisions according to the values and beliefs written in your personal directive. If you do not leave any instructions, wishes, values, or beliefs in your personal directive, your delegate must make decisions according to what they believe would be your instructions, wishes, values, or beliefs. If they cannot do that, they must make decisions according to what they believe to be your best interests.



### **Giving delegates power to choose a replacement delegate**

In your personal directive you may allow your delegates to give their responsibilities for your personal care decisions to someone else. This is called **sub-delegating** their authority to another person. That person will have all the power your delegates give them. Your delegates may sub-delegate only if you say in your personal directive that they may do so.

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### **How specific should my health care instructions be?**

Your directive should be clear and detailed. Include the types of treatments you would agree to and those you would not agree to. Try to avoid broad statements that might reduce the options available for your treatment. For example, if you say you do not want to be given any medication, you might be ruling out a simple treatment that could ease your pain or help you overcome minor ailments during your illness.

Think about what you want your health care providers, delegate or statutory decision-maker to do, and in what situations. Think about what comfort measures or comfort care you would want — for example, drugs for managing pain, oxygen for shortness of breath.

Write down your values and beliefs in your personal directive as a way to assist in interpreting instructions and to help your delegate.

Think about including anything else that could help others know your instructions or wishes about other personal care.

There are some resources listed at the end of this chapter under “Where can I get more information” that will help you to think about and express your instructions, wishes, values and beliefs in your personal directive.

### **Are there people you want your delegate to talk with when making personal care decisions?**

You can say in your personal directive that your delegate must talk with other people when making personal care decisions for you. You can do this by naming the people your delegate should talk with. Instructing your delegate to talk with other people when making care decisions for you can help in two ways.

First, people who knew you when you could make decisions may know about your instructions, values, beliefs, and wishes.

Second, family members who have not been named as delegates may take comfort in being asked about personal care decisions.

### Paying delegates to make decisions

Nova Scotia law says that delegates **cannot** be paid to make decisions for you unless you say in your personal directive that you want to pay them. You must also say in what cases you want to pay your delegates; this is called the “terms.”

### Repaying your delegates’ expenses

If you want your delegate to be repaid for any out-of-pocket expenses (costs they pay for, like parking) they must pay while acting as your delegate, you should say that in your personal directive. Even if you do not say so in your personal directive, your delegates can be repaid for reasonable costs while acting as your delegates. However, the law is not completely clear about this. To be sure that your delegates can be repaid for their reasonable out-of-pocket costs, you should say so in your personal directive.

### Involving people in your capacity assessment

Your personal directive takes effect only when you can no longer make personal care decisions for yourself. This is called “losing capacity.”

You have capacity when you can:

- understand information you need to make a personal care decision, and
- appreciate what could happen if you make or do not make a decision.

To decide if you have capacity, a health care professional will assess (or test) your ability to make decisions. This might include talking with people who know you well.

In your personal directive you may wish to name people for the health care provider to talk to when they assess your capacity. The people you name may be able to give information that helps the person who is assessing your capacity. It also helps the people who care about you to feel included in your care.

You may also wish to give instructions about who must be told when you lose capacity to make personal care decisions. You can also say who must not be told.

### Do I need a lawyer to prepare a personal directive?

You don't have to talk to a lawyer when you write your personal directive, but it is a good idea. Your lawyer can make sure that your directive meets all the legal requirements and says clearly what you want it to say. Lawyers charge a fee based on the amount you want them to do, and how complex the work is. You should discuss fees with the lawyer before you decide to hire them.

If possible, speak with your health care providers to be sure you have full information about your own health when writing your directive. This will help you understand what lies ahead so you can write about the medical care you want or do not want. Your health care provider can explain the different ways to treat medical conditions and can give the best instructions for your needs. Without medical advice, your instructions might not give the results you want.

### What should I do if a hospital or a care facility asks me to sign a standard personal directive form?

Some health care and residential care facilities use standard personal directives when patients or residents are admitted. These directives may include instructions that you would not want. For example, they might include a do-not-resuscitate order.

You do **not** have to sign this standard form. Also, a hospital or health care facility in Nova Scotia cannot refuse to treat you or admit you just because you refuse to sign their directive. The [Personal Directives Act](#) says it is against the law for these facilities to demand a personal directive.

If you get a standard form, review it with your health care provider (your doctor or nurse) before you decide whether to sign it. You might also show it to a lawyer. Do not sign a standard directive form if it would not give you the health care results you want. Instead, talk with your family about your health care wishes. You may want to write your own personal directive if you don't already have one.

Many facilities will ask you if you have a personal directive. If you have one, give the facility a copy for its files.



## Where should I keep my personal directive?

- Keep your signed and witnessed original personal directive in a safe place. Tell your delegate or close family members where it is. Make sure they can reach it easily. You may want to keep it in a marked folder in a place such as top of the fridge, kitchen cupboard, or a desk so it can be found quickly in an emergency. It is a good idea to keep it in a firesafe box.
- Give a copy to your delegate(s) if you named any.
- Give copies to other trusted, close family members and friends.
- Give a copy to your doctor if you have one, and to other people who will be caring for you.
- If you are going into a hospital or a continuing care home, take a copy with you.
- If you are traveling, take a copy with you. Many provinces and territories and US states will honour your wishes. Some will follow the rules in place in their province or territory or state.

Do not put your directive in a safe deposit box that is in your name only. If you do, your delegate may not be able to get to it when it is needed. Although people who have been given copies of your directive may not need the original, your delegate should be able to get the original directive if needed.

For example, you could be in hospital and staff might not be able to find the copy you provided. A health care provider who does not know you might need to see the original. Keep a list of people who have copies of your personal directive with the original. Some people like to put their delegate's contact information in the document.

## How often should I review my personal directive?

You should look at your personal directive from time to time. Update your personal directive when you make important life changes, like a common law relationship, marriage, remarriage, separation or divorce.

In fact, it's a good idea to look at it again each time you experience one of the 5 Ds:

- a new **decade** of life
- the **death** of a loved one
- a **divorce** or separation
- a new **diagnosis** or
- a significant **decline** in health.

Ask yourself if it still reflects your instructions, wishes, beliefs, and values. Think about your delegate, if you have named one: are they still the person you want to make decisions for you? Are they still willing and able to make decisions for you if you cannot make them yourself? Update it if your delegate or alternate dies or becomes unable to make important decisions.

Medical treatments change regularly as research improves them. You might want to mention new treatment methods and technology. If you have a specific illness or condition, review your directive more frequently to make sure you keep up to date on treatments.

Organizations that deal with diseases (like cancer, AIDS, or Alzheimer's disease) have good information about new treatments and care. They can also give you support and help you and your family cope with the illness.

You can ask your doctor, medical specialist or health care provider for more information, or you can go online. If you get information online, check to be sure that it comes from a reliable source.

You can make a new personal directive or change your personal directive any time you want, as long as you have capacity. Make any changes in writing. Add the date you changed your directive, and have witnesses sign the document to show they know that you made the changes. Your witnesses should not be your delegate or delegate's spouse.

If you make a new personal directive or simply make changes, destroy all the old copies. Give copies of your new or updated personal directive to the people who already had a copy – your delegates, family members and health care providers. Ask them to destroy the old copies.

### How can I cancel a personal directive?

You can **revoke**, or cancel, your personal directive at any time, as long as you have capacity. You can declare your intention to cancel your personal directive in writing, and have it signed and witnessed. You can also destroy all copies of the old directive and write a new directive if you want to.

Tell your doctor, hospital, or health care facility that you revoked your personal directive. Get back any copies you gave them. They need to know that you have changed your mind, whether or not you make a new directive. You should also tell your delegate and your family members.

You do not have to write a new directive to cancel the old one. If you decide to make a new directive, then include in it a paragraph that ends (revokes) the old directive. Give a copy of your new directive to your delegates, doctor, and family members.

# HEALTH & OTHER PERSONAL CARE DECISIONS

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Your personal directive will be used to guide personal care decisions only when you cannot make those decisions yourself. That is called “losing capacity.”

Your personal directive can no longer be used when:

- you have capacity again
- you die
- you cancel the personal directive
- a court decides it is no longer in effect.

## Will my personal directive be valid outside Nova Scotia?

There are legal requirements for directives to be valid in Nova Scotia. The law about directives is not the same outside the province. If you are outside Nova Scotia and you cannot consent, your directive might not be followed. It would have to meet the requirements in the province or country you are visiting.

Before travelling, review your directive and get advice from your lawyer. That will help to make sure that your directive will be followed if you cannot consent to treatment while travelling. If you plan to live outside Nova Scotia for some time, you may want to write another directive that will be valid where you are living.

## Where can I get more information?

**Make your Personal Directive online:** (Legal Information Society of Nova Scotia) If you wish you can make your personal directive for free online at [legalinfo.org/personaldirective](https://legalinfo.org/personaldirective). Or you can download instructions for writing a personal directive, and a personal directive form, at [www.legalinfo.org/wills-and-estates-law/health-care](https://www.legalinfo.org/wills-and-estates-law/health-care). Read the Legal Information Society of Nova Scotia’s [Personal Directives Reflection Guide](#) before you start.

- **Nova Scotia Department of Justice, Personal Directives**, including a free information booklet, instructions for writing a personal directive, and a sample form: [www.novascotia.ca/just/pda/](https://www.novascotia.ca/just/pda/)
- **Advance Care Planning Canada:** Free resources and tools on advance care planning to help you create your individualized plan: [www.advancecareplanning.ca/](https://www.advancecareplanning.ca/)
- **Legislation:** *Personal Directives Act*, S.N.S.2008, c.8 (<https://nslegislature.ca/sites/default/files/legc/statutes/persdir.htm>)
- **Regulations:** *Personal Directives Regulations*, NS Reg 31/2010 (<https://novascotia.ca/just/regulations/regs/pdpersdir.htm>)

- **Government of Canada website about medical assistance in dying:** [www.canada.ca/en/health-canada/services/medical-assistance-dying.html](http://www.canada.ca/en/health-canada/services/medical-assistance-dying.html)
- **Government of Canada information about changes to the law about medical assistance in dying** that came into force on March 17, 2021: <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html>
- **End-of-life care in Nova Scotia:** call 8-1-1 to speak to a registered nurse or go to [811.novascotia.ca/](http://811.novascotia.ca/)
- **Medical assistance in dying in Nova Scotia:** you can speak with your primary care provider or a specialist, or contact the Nova Scotia Health MAID Access and Resource Team at 902-491-5892 (Halifax area) or toll free at 1-833-903-6243, or visit [www.nshealth.ca/about-us/medical-assistance-dying](http://www.nshealth.ca/about-us/medical-assistance-dying)
- **Dying with Dignity Canada:** [www.dyingwithdignity.ca](http://www.dyingwithdignity.ca)
- **Caregiving Benefits:** Contact Service Canada at 1-800-206-7218 for information about Employment Insurance Caregiver benefits to help you take time away from work to provide care or support to a critically ill or injured person or someone needing end-of-life care. Website: [www.canada.ca/en/services/benefits/ei/caregiving.html](http://www.canada.ca/en/services/benefits/ei/caregiving.html)
- **Nova Scotia Caregiving Leaves:** Contact Nova Scotia Labour Standards at 1-888-315-0110 for information about unpaid leaves from work under Nova Scotia's Labour Standards Code, including Critically Ill Adult and Child Care Leaves, Compassionate Care Leave: [novascotia.ca/lae/employmentrights/leaves.asp](http://novascotia.ca/lae/employmentrights/leaves.asp)
- **Nova Scotia Hospice Palliative Care Association:** [nshpca.ca](http://nshpca.ca)
- **Canadian Hospice Palliative Care Association:** [www.chpca.ca](http://www.chpca.ca)
- **Health Law Institute, Dalhousie University:** End of Life Law and Policy in Canada: [eol.law.dal.ca](http://eol.law.dal.ca)
- **A lawyer in private practice** who focuses on estate planning work, including wills, powers of attorney, and personal directives. See the Legal Information Society of Nova Scotia website at [www.legalinfo.org](http://www.legalinfo.org) for information about ways to find a lawyer.

### **Legal Information Society of Nova Scotia (LISNS)**

Legal Information Line: 902-455-3135 or 1-800-665-9779

Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)

[www.legalinfo.org](http://www.legalinfo.org)

# Planning Your Funeral

Planning your own funeral before you are near the end of life lets you decide what kind of funeral you want and how much you want to spend.





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**

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# Should I plan my own funeral?

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Some people want to plan their own funeral before they die. If you do this, you will save your family some trouble at a difficult time. If you also pay for your funeral ahead of time, you may save yourself or your family some money. Funeral costs rise each year, and paying ahead of time locks in the cost.

If you plan your funeral, you should let people know. Speak with your executor and family members to make sure they know what you want. Your **executor** is legally responsible to make your funeral arrangements, so this discussion is especially important if your executor is not a family member or there are different expectations among family members about how best to honour you. Tell them about any arrangements you have made. Leave any details or contract for the funeral where they can find it and read it right after your death.

It's not wise to only include burial wishes in your **will**. Your executor might not read your will until after your funeral and burial, so they might not see your instructions before the funeral and burial happen. Also, when you put your burial instructions in a will, they are not legally binding. They are just considered to be an expression of your wishes.

It is a good idea to write a letter to tell your **executor** and family about your wishes and what arrangements you have made. For example, you can:

- leave instructions about whether you wish to be buried or cremated
- say if you have wishes for your ashes
- tell them what kind of service or event you would like after you die. Do you want to have a funeral, a wake, a memorial service, or a celebration of life or more than one of these? Or none of them?
- say if you would like to follow practices from your culture or faith.



## Will my will be read in public after my death?

No. Although this is sometimes done in books, TV, and movies, there is no legal requirement that your will be read publicly.

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## Where do I go to plan my own funeral?

In Nova Scotia, a funeral home is the best place to go for help planning your funeral. You can pre-purchase your funeral from a funeral home. Some funeral homes will also register your wishes for free.

They will give you a small card that says you have registered your wishes at that funeral home. Often, a funeral home will want you to pay for planning your funeral when you make your plans. And you can buy a funeral plan from a funeral home. They call it pre-planning or pre-arranging the funeral.

If you are thinking about paying for your funeral before you die, make sure you get what you want. Take care to not pay for things you don't need. Funeral homes offer many products and services. Many are not needed, and some can be quite expensive.

Take these steps to protect yourself:

- Get at least two quotes.
- Find out what is included in the basic price and what costs are extra.
- Think about whether the extras fit your budget and whether you need them.

You can also arrange ahead of time for a cemetery lot, grave liner, vault, urn, and memorial (including installation). And you can arrange the opening and closing of gravesites.

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## What does the law say a funeral home must do?

In Nova Scotia, any funeral home, crematorium, or company providing funeral merchandise or services to the public must have a funeral home licence from the Nova Scotia government.

Nova Scotia law says how a funeral home, funeral director, embalmer, and apprentice embalmer can advertise. For example, funeral goods and services cannot be sold over the phone, door-to-door, or in a hospital, nursing home, senior citizen's home, or home for special care.

When you buy pre-planned funeral arrangements, the funeral home must give you a copy of your contract. They must keep the money you pay for your arrangements in a trust account. They can use it only for your funeral.

They must show the lowest-priced goods available in any display of funeral merchandise.

## Is there any financial help to pay for my funeral?

The Canada Pension Plan (CPP) gives a one-time death benefit to the executor or next-of-kin of a CPP contributor who has died. The highest amount is \$2,500. Service Canada takes about six to twelve weeks to pay after the executor or next-of-kin applies for this benefit. For more information, call 1-800-277-9914 or visit [www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-death-benefit.html](http://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-death-benefit.html).

In Nova Scotia, the Department of Community Services (DCS) may help with funeral costs if your spouse or next-of-kin cannot afford to pay for a funeral. Your next-of-kin must also apply for the CPP death benefit, which will be used first to pay the cost of the funeral. For more information, contact your local DCS office or visit [www.novascotia.ca/coms/](http://www.novascotia.ca/coms/).

The Veterans Affairs Canada Funeral and Burial Program makes sure that eligible Veterans receive dignified funeral and burial services. The Last Post Fund (LPF) is a non-profit organization which delivers the program on behalf of Veterans Affairs Canada. To be eligible for the program, Veterans must meet both military and financial criteria. For more information, visit [www.lastpostfund.ca](http://www.lastpostfund.ca) or call 1 800 465-7113.

## Can I cancel my pre-paid funeral plans?

You can cancel a pre-arranged funeral plan or cemetery plan at any time. However, the seller may charge an administration fee and may keep the interest plus up to 10 percent of the money you paid. If you bought any cemetery or funeral goods, the funeral home must deliver those items to you or your family.

You cannot get a refund on a cemetery plot if you decide you don't want to use it, but you can re-sell it to someone else.

Your **executor** may cancel a contract for a pre-paid funeral if you died in another province or country, or if you died under unusual circumstances that mean that the goods or services cannot be used when you die.

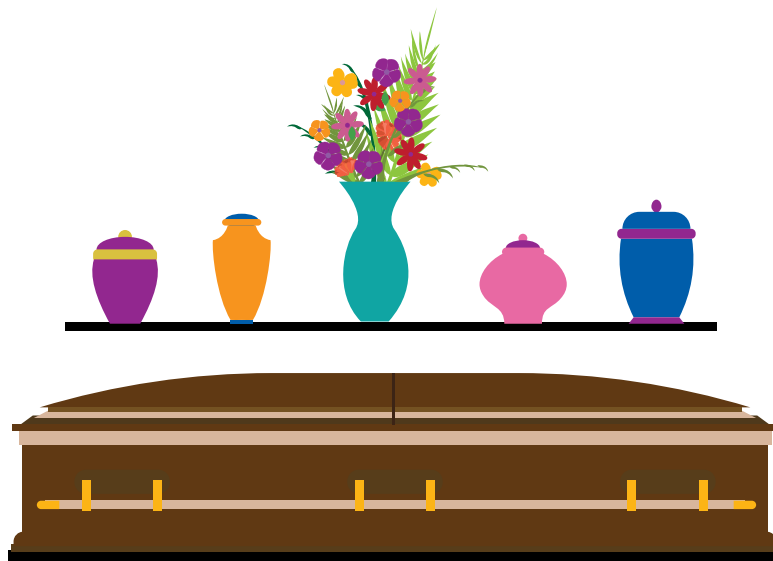
## What are my options on burial or cremation?

In Nova Scotia, you can choose between two main ways of being buried.

One way is to be buried in the ground. The body is placed in a casket and lowered into the ground. Some cemeteries require a liner of wood or concrete.

When you buy a plot in a cemetery, you have the right to visit it at reasonable times and the right to put a memorial on the plot. The cemetery's contract with you will say what types of memorials or monuments you can use.

The second option is to be buried in a building called a mausoleum. This is more expensive than being buried in the ground.



## PLANNING YOUR FUNERAL

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When a person is cremated, both the body and the cremation container are burned completely. Funeral chapels and places that cremate remains prefer that the body be in a container that has a hard top, sides, and bottom, has handles, and will burn completely.

After cremation, a small amount of ash is left. If your family would like to keep the ash, they may. The crematorium or funeral home can give someone the ashes in a container. If your family wants to keep or to bury the ashes, you or they can buy or make an urn.

Some people want to scatter ashes in water or in the wild. The law in Nova Scotia does not stop this. However, do not scatter ashes near water that is used for drinking water. You can scatter ashes on land, but you must ask permission before you go on another person's property.

## Do people have to be embalmed in Nova Scotia?

Funeral homes will often embalm human remains so that the body looks better at the funeral. Embalming is an extra expense, so you should be clear if you do not want to pay for this.

In Nova Scotia, your body does not have to be embalmed if it will be buried or cremated within 72 hours (about three days) after death. Embalming is not done when a person dies of certain diseases that could be transmitted to other people.

## Can I donate my organs, or donate my body for scientific research?

The Nova Scotia law for organ and tissue donation changed on January 18, 2021. The law says you are deemed to have agreed to donate your organs and tissues after you die. This is called 'deemed consent'. If you do not want to donate your organs and tissues you can opt out. You can learn more, including how to opt out, at [novascotia.ca/organtissuedonation](https://novascotia.ca/organtissuedonation). For information about what organ and tissue donation is and how it works go to <http://www.nshealth.ca/legacy-life> or call 1 877-841-3929.

In Nova Scotia, you may donate your body to the Dalhousie University Human Body Donation Program or to the Maritime Brain Tissue Bank.

The Human Body Donation Program helps professional students learn about the human body and biology. Your next-of-kin must agree to the donation. Talk with your family about your wishes and ask that they honour them. If the program accepts your remains, they will cover the costs of cremation.

Your ashes will be buried in the Dalhousie Memorial Garden or shipped to your next-of-kin. Your remains will usually be studied for one to three years before this happens. For more information, call 902-494-6850 or visit [medicine.dal.ca](https://www.medicine.dal.ca) and search Human Body Donation Program.

The Maritime Brain Tissue Bank collects brain tissues for researchers who are studying the brain or causes of dementia. For a brain to be donated, an autopsy must be performed at a hospital to determine the cause of death. The family of the person who has died must agree to this. Talk with your family about your wishes and ask that they honour them. For more information about this program, call 902-494-4130 or visit [braintissuebank.dal.ca](https://www.braintissuebank.dal.ca).

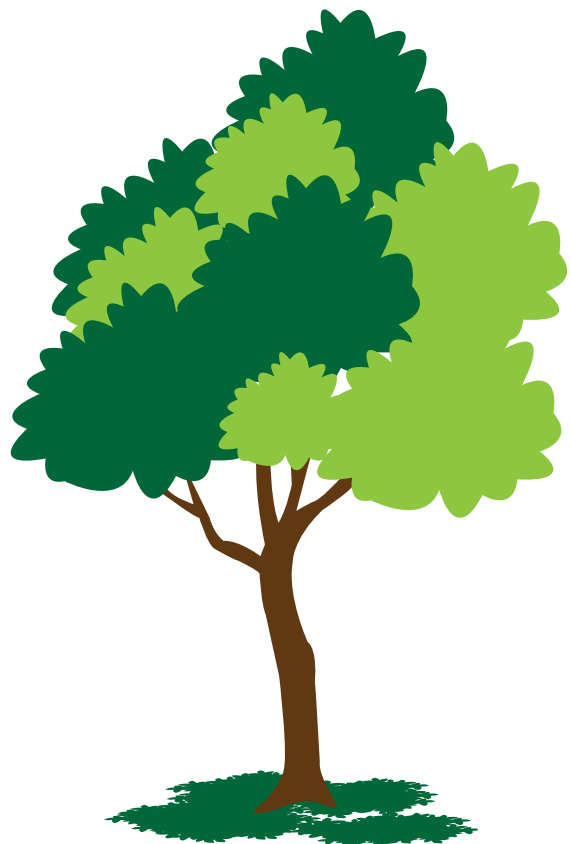
## Does Nova Scotia have burial options that respect the environment?

Eco-friendly or “green” burial practices try to lower the effect on the environment of disposing of human remains. Several non-profits in Canada offer information about eco-friendly burial options, such as the Ecology Action Centre’s green burial working group ([ecologyaction.ca/greenburial](https://ecologyaction.ca/greenburial)).

Green burial options include

- not being embalmed or cremated
- allowing remains to decompose naturally
- not using varnish, glue, laminate, or metal when building coffins or caskets.

Green or eco-friendly burial options are not regulated by government. You must research funeral homes or cemeteries making these claims to be sure that their practices match your wishes. In Nova Scotia, some cemeteries have green burial sections.



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## Where can I get more information on planning my funeral?

Service Nova Scotia has [online information](#) about pre-arranged funeral plans at [novascotia.ca/sns/access/individuals/prearrangements.asp](https://novascotia.ca/sns/access/individuals/prearrangements.asp) including a [Pre-Arranged Funeral Plans Purchaser's Guide](#).

If you have complaints or concerns about funeral planning, contact Service Nova Scotia at 1-800-670-4357 (toll-free) or 902-424-5200.

You can read the Nova Scotia Cemetery and Funeral Services Act online by going to the Nova Scotia Legislature website at [nslegislature.ca](https://nslegislature.ca) and typing “Cemetery and Funeral Services Act” in the Search box.

The community where you want to be buried will have a bylaw on cemeteries. To find out about bylaws in your area, contact your town or municipal office.

The Confederacy of Mainland Mi'kmaq (CMM) has a Mi'kmaw Wills and Estates series which includes:

1. Book One: How to Write a Will
2. Book Two: How to Settle an Estate
3. Book Three: How to Write a Power of Attorney and Personal Directive
4. Mi'kmaq Wills and Estates and Matrimonial Real Property.

Go to [cmmns.com/program/wills-estates/](https://cmmns.com/program/wills-estates/) for more information.

Public libraries have many books that can help you make decisions about planning your own funeral.

### General legal information

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](https://www.legalinfo.org)

# Power of Attorney

By writing a power of attorney, you can give another adult authority to take care of your finances and property matters for you.





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**

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## What is a power of attorney?

A power of attorney is a legal document that lets you give someone you trust the power to look after your finances and property for you. This could include the power to manage your land, house, bank accounts, investments, vehicles, and anything else you own, paying your bills, filing your tax returns, cashing your cheques, and making other legal or financial decisions.

Giving someone power of attorney doesn't limit you from making your own decisions — you still have control of your financial affairs and are free to deal with your property, money, and investments, as long as you have capacity to make those decisions.

If you give someone the power to take care of your financial and property matters, you are called the **donor**. The person you give this power to is called the **attorney**, even if they aren't a lawyer. You can name one attorney, or more than one attorney.

A power of attorney is for financial and property matters only. A personal directive is for health and other personal care decisions. *See the chapter on Health and Other Personal Care decisions for information about personal directives.*

### Why would I need a power of attorney?

Power of attorney is a way for you to plan ahead and choose someone you trust who will act for you and deal with your finances and property if you can't act for yourself, or if you just need someone to help you with your finances for a short time.

Here are some reasons to make a power of attorney:

- You do not feel able or are too sick to manage your financial affairs and you need someone to take over for you until you get better.
- You can't get around very well and you want someone to help with banking such as depositing or withdrawing money from your bank account.
- You are travelling or working away from home, and you want to allow someone to manage your property and/or financial affairs while you are away.
- You have an illness that may reduce your ability to make decisions or to move around in the future, and you want to plan ahead for that.
- You want to plan now while you are well and capable, to prepare for the unexpected. **Capable** means able to understand decisions about your property and financial affairs and able to make important decisions about these things. If something like an accident should happen which

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limits your ability to manage your finances and property or to get around, the power of attorney can be used to help you with decisions about your property and finances.

- If you do not make an enduring power of attorney and you become incapable to take care of your finances and property, someone may need to apply to court to ask to be named as your **representative** to handle your finances and property. This is a court process under a law called the *Adult Capacity and Decision-Making Act*. The process is expensive and takes time. The representative might not be the person or people that you would have chosen to take care of your affairs. The court would decide what powers your representative would have and what decisions they could make on your behalf. A power of attorney is more cost effective than a court order, and you can choose who you want to take care of your finances and property, and what powers they will have.

## Power of attorney for persons registered under the Indian Act who ordinarily live on reserve

The federal *Indian Act* has rules for making powers of attorney that apply to persons registered under the *Indian Act* who ordinarily live “on reserve”. The *Indian Act* does not apply if you have status under the *Indian Act* and live off-reserve, or if you do not have status under the *Indian Act* and live on-reserve. Provincial laws apply instead.

If you have status under the *Indian Act* and ordinarily live on a reserve, you can get information about powers of attorney from:

- Indigenous Services Canada online [www.canada.ca/en/indigenous-services-canada.html](http://www.canada.ca/en/indigenous-services-canada.html), then ‘Treaty annuities, Estates and Trusts’, and ‘Estate services for First Nations’
- The Confederacy of Mainland Mi’kmaq (CMM) has a Mi’kmaw Wills and Estates series which includes:
  1. Book One: How to Write a Will
  2. Book Two: How to Settle an Estate
  3. Book Three: How to Write a Power of Attorney and Personal Directive
  4. Mi’kmaq Wills and Estates & Matrimonial Real Property

Go to [cmmns.com/program/wills-estates/](http://cmmns.com/program/wills-estates/) for more information.

- a lawyer who works in wills and estates law, and who knows about Aboriginal law and the rules that apply to power of attorney for persons registered under the *Indian Act* who ordinarily live on reserve or on Crown lands.

## Do I need power of attorney if I have a will?

Yes. A power of attorney is different from a will. Power of attorney only applies while you are alive. A will applies only after you die — it says what happens to your money and things after you die and gives your executor authority to look after your estate. Even if your estate is small there are final matters to deal with when you die, such as filing final tax returns, paying final bills, and closing your bank accounts. See the chapter on Wills for more information.

## Does power of attorney cover health and other personal care matters?

Power of attorney does not tell others how to make health or other personal care decisions for you, unless it includes a personal directive in the document.

Health and other personal care decisions are usually covered in a separate legal document called a personal directive that allows you to give someone you trust authority to make health or other personal care decisions for you if you cannot make those decisions yourself. A **personal directive** covers personal care decisions such as medical treatment, where you want to live, activities that are important to you, and who you want to visit you. A personal directive allows you to name someone called a **delegate** to help make these types of decisions for you. You may also give instructions for the delegate to follow when they make personal care decisions. You can learn more about personal directives at [www.legalinfo.org/wills-and-estates-law/health-care](http://www.legalinfo.org/wills-and-estates-law/health-care)

## What is an enduring power of attorney?

An enduring power of attorney is type of power of attorney. With an enduring power of attorney your attorney’s power continues, or ‘endures’, after you are no longer able to make your own property and financial decisions. This is called losing capacity. An enduring power of attorney document must clearly state that the attorney’s authority continues after the donor loses capacity. If it does not state that, the attorney’s power ends when you lose capacity. For example, an enduring power of attorney may say something like the following:



**“This enduring power of attorney becomes effective immediately and may be exercised during any period of legal incapacity I may suffer. It is an enduring power of attorney within the meaning of the Powers of Attorney Act”**

An enduring power of attorney is the most common type of power of attorney in Nova Scotia, because it allows you to plan for the future. It gives you peace of mind knowing that you have appointed someone you trust to manage your finances and property if you cannot.

## When does an enduring power of attorney take effect?



You can choose when your enduring power of attorney takes effect. In other words, you say in your power of attorney when your attorney is allowed to start acting for you.

You have two choices:

### 1. Takes effect as soon as it is signed and witnessed

Your attorney's power may start right away as soon as your enduring power of attorney is signed and witnessed. Your attorney will be able to continue to act if you are no longer capable of managing your property and finances.

Most enduring powers of attorney in Nova Scotia take effect right away but are not intended to be used until some future date. Your attorney may not need to act for you unless you ask them to, or until you lose capacity to manage your own affairs. If the document takes effect right away when it is signed, generally no capacity assessment would be needed for your attorney to start to act. Your attorney would not have to go through a formal process to prove to third parties, such as banks, that the power of attorney has come into effect. That makes it even more important to choose someone you trust to be your attorney.

If you are not comfortable allowing your attorney to determine when to start using the power of attorney to help you, there are ways to add more protection:

- you can ask your lawyer if they will keep the original document for you (called 'holding it in trust') and only release it if necessary, or
- you can keep the original enduring power of attorney in a safe place, tell your attorney where it is, but only allow the attorney to access it when it is needed.

Talk with a lawyer about other ways to prevent abuse of your power of attorney, and see 'Monitors and other ways to prevent misuse of power of attorney' below.

### 2. Takes effect only if you lose capacity

Some enduring powers of attorney come into effect **only** when the donor is no longer capable of managing their own finances and property. This type of power of attorney is called a "springing" power of attorney because it springs into effect only when there is proof the donor has lost capacity. In that case your attorney's power would start only if you lose capacity. These are much less common, as in some cases it is difficult for a capacity assessor to confirm that the donor is completely incapable of making their own property and financial decisions. It is best to see a lawyer if you want to do this type of **springing** enduring power of attorney.

You can state in your power of attorney who you want to assess your capacity to make property and financial decisions. Usually you would choose a professionally qualified capacity assessor,

but you can name anyone else you wish, including your attorney. If your power of attorney does not say who you want to do the capacity assessment or if that person cannot do it, a formal capacity assessment may be done by an approved health professional, including a medical doctor or registered psychologist. Some nurse practitioners or registered nurses, occupational therapists, and social workers may also do capacity assessments if they have completed specific training developed by the Nova Scotia [Public Trustee's Office](#).

Highlight box: If you are found to lack capacity to make your own decisions, but you later regain your ability to make decisions, your attorney must stop acting.

## What is a springing or contingent power of attorney?

Unless the power of attorney says differently, a power of attorney comes into effect as soon as it is signed and witnessed. Your attorney can start acting at any time after that.

However, a **springing** power of attorney is a special power of attorney document that says the triggering event that will make it come into effect. For example, the triggering event could be if the donor loses capacity to make their own property and financial decisions. Another example is if a business owner needs someone else to run their business for a short time because they are going to be travelling or in hospital.

Springing powers of attorney are sometimes called a **contingent** power of attorney.

Springing or contingent powers of attorney are much less common than powers of attorney that come into effect as soon as they are signed. It is best to get legal advice from an estate planning lawyer if you want the type of power of attorney that comes into effect only when some triggering event happens.

## What happens if I lose capacity and I don't have an enduring power of attorney?

- If you do not have an enduring power of attorney and you lose capacity to take care of your finances and property, someone may need to apply to court to ask to be named as your **representative** under a law called the *Adult Capacity and Decision-Making Act*. The court process is expensive and takes time. The person or people who apply to court to be your representative might not be who would have chosen to take care of your affairs. The court would decide what powers your representative would get and what types of decisions they could make on your behalf.
- If no one you know is able and willing to act as a representative, the Nova Scotia Public Trustee may step in to manage your financial affairs. You can get more information about adult representation on the Nova Scotia Public Trustee's website at [www.novascotia.ca/just/pto](http://www.novascotia.ca/just/pto),

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under “*Adult Capacity and Decision-making Act*”, or go to the Legal Information Society of Nova Scotia’s website at [www.legalinfo.org](http://www.legalinfo.org), under ‘*Wills and Estates*’. Or, read the chapter on Adult Capacity and Decision-making.

## Should I have an ordinary power of attorney or an enduring one?

The kind of power of attorney document you have depends on your needs. Every situation is different, so you should speak with a lawyer about what is best for you.

An ordinary power of attorney gives someone authority to take specific action for you at specific times. For example, people in the military may allow someone to handle their banking while they work outside of Canada.

Enduring powers of attorney are much more common as they allow you to plan for the future and have someone you trust to act for you when you cannot act for yourself.

If you want the person named in your power of attorney to be able to act if you lose capacity, then you will need an enduring power of attorney.

If you already have an ordinary power of attorney, talk with your lawyer about whether you should replace it with an enduring power of attorney.



# Making a power of attorney

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## Who can make a power of attorney?

You can make a power of attorney if you are age 19 or older (an adult) and capable of understanding the nature and effects of making the power of attorney. The law says all adults are capable of making a power of attorney, unless there is clear evidence to show they are not.

You are capable of making a power of attorney if you understand and appreciate all of the following:

1. What property you own and the value. You must also have a basic idea what things are valuable and what things are not.
2. Your legal obligations to people who depend on you for financial support — your dependants. Examples are your spouse and children under 19.
3. That your attorney will be able to do almost everything that you can do with your property and finances, unless you say something different in your power of attorney document to limit their power.
4. That if your attorney does not do a good job your property could lose value. You might lose money.
5. That your attorney could abuse the powers you give them. Your attorney might not do what is best for you.
6. That you can cancel (revoke) your power of attorney at any time if you are able to understand what it means to do that. If you have lost capacity you cannot revoke the power of attorney.

You must understand all of the above six things at the time when you sign the power of attorney document.

Sometimes a person may need help to communicate and explain their wishes. The way you communicate does **not** tell people whether you are capable. You may need support or help from a family member, friend, translator, interpreter, or technology to tell people about your wishes. Communicating in different ways does not mean that you cannot understand what it means to make a power of attorney.

- You should make your power of attorney while you are in good health so that no one questions whether you had capacity to make one. Whether you are able to make a power of attorney can be questioned:
- if your ability to think clearly is affected by illness (including dementia or Alzheimer's), pain, or drugs (prescription or otherwise)
- if you feel threatened or pressured to write a power of attorney by someone who may be trying to force you to make one. Power of attorney must be made without pressure or influence by

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anyone, including people you might rely on to help you financially, for housing, or for personal needs and health care.

- This is not a complete list. But it gives you an idea about the types of challenges that may be made to the validity of a power of attorney. And, more than one of these issues may apply to any situation.

Even if you have some trouble understanding information or lack some decision-making ability, you might still be able to make a power of attorney under the right circumstances and with the information explained in a way that you are able to understand. A health problem that affects your thinking may matter, but it is not the only issue that matters. For example, someone in the early stages of Alzheimer's who has a bit of trouble with thinking and reasoning might still be capable of making a power of attorney. Whether you are capable of making a power of attorney is a legal question, not a medical one. But if you have a medical issue that affects your ability to think clearly, you should [get help from a lawyer](#) who does estate planning and who has experience working with people who have some decision-making, reasoning or memory problems. The lawyer may require input from your doctor or a capacity assessor to determine if you have capacity to make a power of attorney before going ahead. Don't be offended if this happens. It is better to have a capacity assessment to make sure the document you make is valid and won't be challenged.

It is also very important to get help from a lawyer if you feel pressured or threatened by someone who may be insisting that you do one.



**If you make a power of attorney and it is not clear if you were capable when you signed it, people might refuse to let your attorney act or make decisions for you. Also, somebody could challenge your power of attorney in court.**

## *Other legal requirements*

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Your power of attorney must:

- be in writing
- be dated
- be witnessed by two independent adults
- be signed by you and your two witnesses at the same time.



**Remember — you must also be a capable adult at the time you sign the document.**

**In writing:** Your power of attorney must be a written document. A video or audio power of attorney is not valid.

**Signed and Dated:** You, the donor, must sign your power of attorney. It must also be dated. If you wish you can put it under “seal.” Sealing means that someone has attached a red seal to the document opposite the donor’s signature. You can buy seals or stamps at an office supply store.

If you can read the power of attorney document but cannot sign your name on it because of a physical disability for example, you may sign by making your mark, like an “X” or other symbol, on the signature line. A witness should sign a sworn statement confirming that you made your mark in the presence of the two witnesses, and the statement should be attached to your power of attorney. This statement is called an affidavit of execution.

If you can read the power of attorney but cannot sign your name or make your mark, someone else may sign the power of attorney for you. In that case the person who signs:

- must be at least 19 years old
- must be with you when they sign the document on your behalf. You must direct them to sign for you
- cannot be your attorney
- cannot be your attorney’s spouse, registered domestic partner, common-law partner
- cannot be your attorney’s child.

If you cannot read the document someone must read the whole document out loud to you and your witnesses before you and your witnesses sign it or before you make your mark. A witness must sign an affidavit of execution saying that someone read the document to you and that you understood it before you signed it or made your mark on it.

**Witnessed:** A power of attorney must be witnessed and signed by two people who are at least 19 years old.

Your witnesses cannot be:

- your attorney
- your attorney’s spouse, registered domestic partner, or common-law partner
- your attorney’s child.
- Your witnesses must both be with you when you sign the document and must then also sign the document in front of you. Your witnesses do not need to know what is in your power of attorney.
- The following are not legal requirements, but are a good idea:
  - Number each page. This helps make sure pages are not replaced or removed.
  - Initial each page. Both you and your witnesses should do this.
  - Affidavit of Execution. Have one of your witnesses swear an affidavit of execution.



## What is an affidavit of execution?

An affidavit of execution is a sworn witness statement confirming that they saw you sign the power of attorney (or that another person signed on your behalf if you were unable to sign), and that you were at least 19 years old (an adult) when you made the power of attorney. The witness signs the affidavit of execution in front of a Commissioner of Oaths or a notary public.

An affidavit of execution can be made any time after you sign your power of attorney. It is best to do it right after the power of attorney is signed.

A Commissioner of Oaths or a notary public must confirm that the affidavit of execution is true. All lawyers are Commissioners of Oaths. You can also find notaries public and Commissioners of Oaths in the Yellow Pages, or visit the Legal Information Society of Nova Scotia website at [www.legalinfo.org](http://www.legalinfo.org) for ways to find one.

People often do an affidavit of execution for a power of attorney, even though the law does not say you must do one. For example, if you want your attorney to buy or sell land for you, the Land Registration Office will need an affidavit of execution.

## Does the attorney have to sign the power of attorney document?

No. The attorney does not have to sign the power of attorney.

But when the attorney is using the power of attorney they will have to sign documents at each bank, trust company, and credit union where you have an account that the attorney will use. Each institution will also have its own forms for you or your attorney to fill out. You will usually need a special form from your bank if you want your attorney to access your bank account(s). Contact your bank to find out what they need.

- **Note:** When the attorney is acting for you and signs documents on your behalf they sign their own name, not your name. The attorney should include that they are acting as power of attorney.

Two examples of how an attorney would sign on your behalf are below:

- **Signed:** John Smith, duly appointed attorney for Jane Smith, or  
**Signed:** John Smith (power of attorney for Jane Smith).

## Do I need a lawyer to write a power of attorney?

The law does not say that a lawyer must make or write your power of attorney. But it is wise to at least speak to a lawyer about it. You can write your power of attorney yourself. You can fill in a blank form;

you can buy one from a store; or you may find one online. There are also books and kits available for powers of attorney. Check to make sure any form you use follows the requirements of Nova Scotia's powers of attorney legislation.

A power of attorney is an important legal document, and it must be worded carefully to make sure that it says what you want. If a lawyer makes a mistake, the lawyer's liability insurance may cover the situation.

Among other things a lawyer can:

- make sure the power of attorney is clear about how much authority you give to your attorney,
- make sure that your power of attorney covers all the steps needed to do what you want done,
- make sure the power of attorney meets all the legal requirements,
- inform you about the best clauses to provide for unexpected events,
- inform you about options for wording the power of attorney,
- inform you about steps you can take now to make it easier for your attorney to deal with your affairs later,
- inform you about steps you can take to help prevent misuse of your power of attorney,
- answer any questions you might have,
- help you understand better how power of attorney works when you lose capacity and what the attorney will be doing for you,
- provide proof that you had legal capacity when you made your power of attorney,
- provide proof that you made your power of attorney by your own free choice, and free of undue influence
- act as one of your witnesses when you sign your power of attorney
- in some cases, keep your power of attorney for you and release it only when you need your attorney to act for you.

If you decide to write your own power of attorney, it is a good idea to ask a lawyer to look it over. Ask them to make sure that it meets all the legal requirements and allows your attorney to do what you want.

Always get a lawyer's help:

- if you do not understand the information you need to make a power of attorney
- if you cannot identify and weigh your options and understand the effect your choices may have
- if you have a health problem that affects your thinking, reasoning, decision-making or memory
- if you feel pressured to do a power of attorney because someone is insisting that you do one
- if you want a specific power of attorney for a limited purpose, such as to sign a deed to your home. There is no standard form for a specific power of attorney because the wording will depend on what powers you want to give your attorney. The document must be written carefully to meet your needs
- if you want to give the attorney a fee for doing the work, especially when the attorney is not a family member.

## How much will it cost?

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A power of attorney form from an office supply store costs a few dollars, or you may be able to find one online. Banks do not charge a separate fee for their power of attorney forms.

The cost for lawyers' fees will depend on your needs, how long it takes to draft the power of attorney, and the number of times the lawyer meets with you. You should ask the lawyer about their fees. Most lawyers charge a flat fee for doing a power of attorney and will often offer a flat fee package deal that would include doing your power of attorney, will, personal directive, and perhaps a child guardianship document if you have minor children. For information about finding a lawyer, visit the Legal Information Society of Nova Scotia website ([www.legalinfo.org](http://www.legalinfo.org)).

Other costs:

- Your attorney may have out of pocket expenses (called 'disbursements'), such as for postage and telephone.
- If the attorney you appoint in the power of attorney document is also your lawyer and you ask them to do legal work like buying property, they may charge for doing that work.
- The Public Trustee and trust companies charge fees for acting as your attorney. Fees are based on the value of your estate and your income.

A friend or relative is not entitled to a fee unless there is an agreement between the two of you for payment. In that case, you must include the terms of payment in the power of attorney document. If you do not they will not be entitled to a fee. Often a family member or a friend acts as an attorney without payment.



# Choosing your attorney



## Who can be my attorney?

Your attorney must be:

- age 19 or older, and
- able to understand what it means to act as an attorney under a power of attorney document and the responsibilities involved.

The best attorney is a capable adult you know well and trust.

Here are some things to think about when you are choosing an attorney:

- Your spouse or partner, a family member, or a close friend may be able to do a good job. Many people choose their spouse or partner.
- Think about choosing someone who knows about money, banking, and business affairs. You can also state in your power of attorney that your attorney can get help from a financial expert if they need it, and the cost is paid out of your money. The attorney must be able to keep good records and report to a monitor when requested or to a family member no more than once a year.
- Your attorney for finances and property and your decision-maker for personal care (your 'delegate') may not be the same person. If so, will your attorney be able to work well with your personal care decision-maker to make decisions that overlap on money and personal care issues?
- Does your attorney get along with your close family and friends? Could there be conflicts?
- Will your attorney be available when you need them to act on your behalf?
- Does your attorney live in Nova Scotia or in Canada? It is best to name an attorney who lives in Nova Scotia, or at least in Canada. Naming a non-resident of Canada can cause legal and tax problems, so talk with a lawyer if you want to do that.
- If you do not wish to or can't name a family member or friend as your attorney, you may name a trust company, a professional advisor (lawyer, accountant, sometimes an investment advisor), or the [Nova Scotia Public Trustee](#). You should talk with them first. They do not have to accept this role and some professional advisors cannot or simply won't. You must check first with the [Nova Scotia Public Trustee](#) if you want them to act as your attorney.

## Who can't be my attorney?

The law says your attorney cannot be:

- anyone who is going through a bankruptcy process (called an “**undischarged bankrupt**”). The law says you are still able to appoint them if they tell you in writing about the bankruptcy, and while you have capacity you agree in writing that you still want them to be your attorney.



**TIP: be careful about choosing an attorney who has had trouble managing money. There might be a greater risk that you will lose money and property.**

- anyone who has been convicted of an offence involving dishonesty, like fraud, theft, or forgery. The law says it is still okay to choose them:
  - if they have a pardon (record suspension) for that conviction ([canada.ca/en/parole-board/services/record-suspensions.html](https://canada.ca/en/parole-board/services/record-suspensions.html)); or
  - if they tell you in writing about the conviction, and while you have capacity you agree in writing that you still want them to act as your attorney



**TIP: be careful about choosing an attorney who has a conviction involving dishonesty. There might be a greater risk that the attorney will misuse the power of attorney.**

- anyone who is paid to provide health care or support services to you. This restriction doesn't apply if your paid caregiver is an immediate family member such as your spouse, child, sibling, or parent.

It is always best to name an attorney who lives in Canada, and preferably in Nova Scotia. Naming a non-resident of Canada can cause tax and legal problems, so talk with a lawyer if you want to do that.

Other than those restrictions, you can choose any trusted, capable adult as your attorney.

## Can I name more than one attorney?

You can choose to name more than one attorney. Be careful about doing this. While there may be some good reasons to name more than one attorney, it can also lead to conflicts, costs and delays if your attorneys disagree. Be certain there is no possibility of conflict between your attorneys before you name more than one. If attorneys disagree they might have to go to court to settle the dispute.

If you choose to name more than one attorney you can say in your power of attorney how you want them to make decisions. You might say you want them to make decisions jointly or separately:

- **Jointly.** Acting **jointly** means that your attorneys make decisions together. If you don't say anything in your power of attorney about how your joint attorneys should make decisions, the law says joint attorneys must act by majority. That means the decision of the majority of your joint attorneys will be the final one.

You can choose to say in your power of attorney that your joint attorneys must make decisions by unanimous agreement, instead of by majority. Be careful about doing that. If your attorneys cannot unanimously agree about a decision, there is no simple legal procedure to resolve the dispute. If one of the attorneys resigns the remaining attorney can continue to act. Otherwise in most cases someone may need to apply to court.

Your remaining attorneys can continue to act if one or more of your joint attorneys:

- dies
  - gives up the job (resigns) by giving proper notice
  - loses capacity
  - will not act or is unable to act
  - cannot be found despite doing reasonable things to try to find them
- **Separately.** The law calls this “severally”. Acting separately means that each of your attorneys can make decisions for you on their own. One attorney would not have to contact any of the others and hear their opinion before deciding or acting, unless you say in your power of attorney document that they must do that.

### Name at least one back-up attorney

If possible, name at least one alternate attorney. An alternate attorney is sometimes also called a ‘back-up’ or ‘contingent’ attorney. Your alternate attorney can take over if your original attorney or attorneys cannot or will not act from the start or becomes unable to act part way through. The alternate attorney will have the same powers as the original attorney(s). If you do not name an alternate attorney and your original attorney(s) cannot or will not act, your power of attorney will be cancelled and someone may need to apply to court to be named as your representative.

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### Talk with your chosen attorney(s) about the job

Talk with the person or people you want to be your attorney(s) before you name them. Ask if they are willing to do this for you. They can say no to the job. Make sure that they want the job and have the time and the ability to carry out the duties. Looking after someone else's property and finances can be difficult and it takes time. Sometimes it includes responsibilities that last for years. If they say no, you must appoint someone else.

It is a good idea to talk with your attorney about:

- your attorney's legal duties and responsibilities. See the section on "Your Attorney's Role" below
- how and how often you expect them to communicate with you or with others you choose
- your instructions, values, wishes, beliefs, and attitudes about money and your financial goals. This will help guide your attorney to make decisions for you
- your plans for what you want to happen with the things you own when you die.



# Your Attorney's Role

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## Who makes decisions and how are they made?

If you give someone your power of attorney:

- you can still make your own decisions and manage your own finances and property, until you become unable to do so
- your attorney can't override decisions you make while you're capable of making them yourself. Your attorney must consult with you and follow your instructions.
- you can revoke (cancel) your power of attorney at any time, as long as you are still capable.

## What if I do not have capacity to make my own decisions?

If you have an enduring power of attorney and lose capacity, your attorney must involve you in decisions about your finances and property whenever it is reasonable to do that.

Your attorney must follow these steps to make decisions:

1. Follow the most recent, relevant instructions you gave when you had capacity, if any
2. If you did not give your attorney instructions, your attorney must follow your current wishes, as long as your wishes are reasonable
3. If your wishes are not reasonable or your attorney can't determine what they are, your attorney must decide as they believe you would have. Your attorney must take your beliefs and values into account when they do this
4. If your attorney doesn't know what decision you would have made, your attorney must decide based on what they believe is in your best interests.

## How much power can I give my attorney?

You choose what your attorney can and can't do on your behalf. Your attorney can only do what you give them authority to do. You list their powers in your power of attorney document.

You can give your attorney general powers or specific powers.

# POWERS OF ATTORNEY

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## General powers

You can give your attorney broad powers over all areas of your property and finances. They would be able to do almost anything that you can do with your finances and property.

With general authority an attorney would commonly be able to do things like pay your bills, manage your banking and investments, do your taxes, and buy and sell property.

## Specific powers

You can limit what your attorney can do to a single decision, specific task or tasks, or to a specific time period.

A specific power of attorney is most often used when you can't manage your financial and property matters for a short period of time. A common example is if you need someone to sell a piece of land for you or to deal with your banking and bills for you while you are travelling. It is important that a specific power of attorney include all steps involved in the work you want done. For example, a power of attorney to buy a piece of land should include the power to sign all the needed documents and it may be time-limited for a few weeks or months.

### ***A note about buying and selling land with a power of attorney***

If you want your attorney to deal with land, your power of attorney must be recorded at the Land Registration Office where the land is located before the sale or purchase takes place. The power of attorney must be signed under seal and have an affidavit of execution. If you are working with a lawyer they will register the necessary documents.

You can find phone numbers for Land Registration Offices in the government pages of the phone book under Land Registration or visit [www.novascotia.ca](http://www.novascotia.ca) for locations. There is a fee to record documents. Contact staff at the Land Registration Office for information on fees for recording documents.

Land transactions done with a power of attorney are not valid until the power is registered.

## There are always some things your attorney cannot do

Your attorney cannot:

- Make a will for you
- Change or cancel (revoke) your will
- Make a new power of attorney for you
- Change a beneficiary designation on your assets, unless the court allows this, or the document specifically authorizes changes
- Vote in an election for you
- Make an affidavit (sworn document) for you.

# Do I have to pay my attorney?

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## Paying your attorney a fee for their work

Professionals such as trust companies, lawyers, or the Nova Scotia Public Trustee's Office charge fees for acting as your attorney. Fees are based on the value of your estate and your income.

A friend or relative is not entitled to a fee unless there is an agreement between the two of you for payment. In that case, you must include the terms of payment in the power of attorney document. If you do not they will not be entitled to a fee. Often a family member or a friend acts as an attorney without payment.

## Re-paying your attorney's expenses

Your attorney is allowed to pay themselves for reasonable out-of-pocket expenses they have for properly doing their job as your attorney, unless you say something different in your power of attorney. This is called **reimbursement**. Examples of expenses are taxis, government fees and court fees.



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## Your attorney's legal duties and responsibilities to you

**Your attorney must be loyal to you.** This includes all the following duties:

- following and staying within the power you give them in the power of attorney document
- acting in good faith
- acting only in your best interests
- acting only for your benefit, unless you give informed consent for them to act to benefit someone else
- taking good care as they make decisions for you
- using reasonable care and skill
- avoiding conflicts of interest
- not making secret profits
- not profiting personally from what they do for you, or from your property, unless your power of attorney says they will be compensated for helping you.

### *Your attorney must involve you in decisions whenever that's reasonable.*

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Your attorney should consult with you and ask you what you want. You have a right to ask questions and to be kept informed. Remember that as long as you have capacity you can continue to manage your own finances and property and make your own decisions even when you've given someone power of attorney.

If you do not have capacity to make your own decisions, your attorney must be guided by what they know of you and by your instructions, values, wishes, beliefs, and attitudes about money. See the section "Who makes decisions and how are they made?" for more about how your attorney must make decisions.

### *Your attorney must give notice when they begin to act for you*

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When your attorney starts acting for you, your attorney must notify all of the following, in writing:

- you (the donor), and
- your monitor, if you name one in your power of attorney (See 'Monitors and Other Ways to Prevent Misuse of a POA' for more information about monitors), and
- anyone else you list in your power of attorney who you want to get notice.

If no one on the above list able to receive the notice, or if you don't list anyone in your power of attorney who you want notified, your attorney must notify your **immediate family members** and your **delegate(s)** under a personal directive, if you have one. Your immediate family members are your

spouse, registered domestic partner or common law partner, adult child, adult sibling, or parent. You can say something different in your power of attorney if these are not the people you want your attorney to notify when they start acting for you.

### ***Your attorney must stop acting if you lose capacity but later regain it***

If you have an enduring power of attorney and are found to lack capacity to make your own decisions, but you later regain your ability to make decisions, your attorney must stop acting.

### ***Your attorney must keep a record of what they do for you***

Your attorney must keep current, detailed, and accurate records of what they do for you as an attorney.

In certain situations your attorney may be required to provide a complete record of all transactions they made for you, including a statement of the things you own and what they are worth (assets) and what you owe (liabilities), and how that financial picture may have changed over the period they are reporting on. This is called providing an **'accounting'**.

Financial records your attorney should keep include:

- a current list of what you own and what you owe, with known values or sensible estimates
- all bank records (account statements, withdrawals and deposit slips for all transactions, cancelled cheques, online records)
- all income tax information (notices of assessments, T4 and T5 slips, other supporting documents)
- all receipts for purchases they make when acting for you, such as parking, taxis, and, if applicable, any payments made to the attorney
- all invoices received and paid on your behalf
- other important letters and papers (examples are deeds, leases, notices from landlords and employers, insurance information).

Your attorney should always be ready to explain and account for what they do on your behalf. You can require your attorney to account to you at any time. You can also require your attorney to account to others you choose, including a monitor. *See the section 'Monitors and Other Ways to Prevent Misuse of a POA' for more about ways you can make sure your attorney is accountable for what they do and does not misuse the powers you give them.*



# POWERS OF ATTORNEY

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## *Your attorney should not mix their money and property with yours*

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Your attorney must keep their own bank and investment accounts separate from your account(s). Your attorney should **never** mix their own accounts or property with yours unless that was already done with your knowledge and agreement before you lost capacity.

## *Your attorney should not prevent your contact with supportive friends and family*

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Your attorney must not unreasonably interfere with or prevent your personal contact with supportive family and friends.

## *Your attorney should respect your estate plan whenever it is reasonable to do that*

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Your attorney must not dispose of assets your attorney knows are part of your estate plan, unless they need to do that to carry out their duties to you.

Your estate plan is your plan for what you want to happen with the things you own when you die. Your estate plan could include your will, consideration of jointly owned assets, designation of beneficiaries on life insurance, registered plans (examples: RRSPs, TFSAs, RRIFFs), and trusts.

For example, if you tell the attorney what specific gifts you've listed in your will or have as part of your estate plan, your attorney should not sell or give that property away, unless they must do that to make sure your needs are met. Meeting your needs comes first.

## *Your attorney must not use your money to give gifts*

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Your attorney can give gifts using your money or property only if your power of attorney document specifically allows them to give gifts.

If you say in your power of attorney that your attorney can give gifts, your attorney must still be careful. Your well-being comes first. Before giving a gift, your attorney must make sure there will still be enough money to meet your personal and health care needs and to meet your legal obligations. Your attorney would not want to sell any item you have gifted in your will. For this reason, think about giving your attorney a copy of your will.

## *Your attorney must not give their power to someone else*

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Your attorney must not give or 'delegate' the authority you give them to someone else. This restriction does not apply if you say in your power of attorney that your attorney is allowed to delegate their power to someone else.

# Monitors and Other Ways To Prevent or Stop Misuse of Power of Attorney

Power of attorney generally gives your attorney the power to do almost anything you can do with your finances and property. Government, banks or other third parties will rely on what's in your written power of attorney document. They will not usually contact you first to see if you approve of what the attorney is doing.

Most people who are named in a power of attorney are honest and act reasonably. They try to do a good job and help you as they said they would and live up to their obligations.

There is a risk though that the attorney could misuse or abuse that power because they believe that they know what is best for you, or they want to get money or property for themselves.

This section talks about some things you can do to help prevent or stop misuse of your power of attorney.



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## Name a monitor

You have the option of naming someone to review and watch over your attorney's activities and decision-making. This person is called a **monitor**.



**A monitor can help protect your well-being and finances if your attorney misuses their authority.**

A monitor may:

- visit you and communicate with you at any reasonable time
- check in with the attorney to make sure your attorney is taking good care in managing your finances and property, including asking your attorney for records of what the attorney has done on your behalf
- if you lose capacity, require that your attorney give the monitor information, records or a detailed **accounting** of what the attorney has done on your behalf
- apply to court to deal with any problems related to the power of attorney.

# POWERS OF ATTORNEY

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You can say in your power of attorney if there are other things you want your monitor to be able to do in overseeing your attorney.

If your monitor believes your attorney is misusing the power of attorney, the monitor must tell you and any other attorneys named in your power of attorney.

If you choose to name a monitor in your power of attorney:

- pick a capable, responsible adult you trust,
- talk with them about it first to make sure they are prepared to do it.

Your monitor cannot be your attorney or attorneys. Other than that, you can choose any trusted adult to be your monitor, including someone who lives outside Canada.

## Other ways to prevent misuse of a power of attorney

Here are some other things you can do help stop someone from abusing your power of attorney:

- Choose carefully. Choose an attorney you can trust who will involve you in decisions when reasonable to do that, keep you informed, and respect your instructions and wishes.
- Continue to pay attention to your financial and property affairs. Ask your attorney questions. Get regular statements and updates. Do not give up all control to that person.
- Require your attorney to give you, or someone else if you lose capacity (a **monitor**), regular updates on how they are managing your affairs.
- If you have a lot of savings, property, or investments, think about appointing a professional such as a lawyer or a trust company to act on your behalf. Look carefully into the costs of this before you decide.
- Think about choosing more than one attorney to act jointly. It is not likely that both will be dishonest or negligent. It is best to talk with a lawyer if you want to name two or more attorneys to act jointly.
- Give a specific rather than a general power of attorney. For example, if you need your attorney to deal with just one asset, such as a bank account, give them power to do only that. However, a general power of attorney is usually more practical and useful.



- Check your bank statements and cancelled cheques carefully. You can put a limit on the amount that your attorney can withdraw from your accounts. If the attorney wants to withdraw more than that amount, then you would have to tell your bank that you agree.
- Tell your banks, financial institutions, and investment advisor to tell you about any transactions over a set limit.
- Make a list of the things you own: your property, valuable jewellery and artwork, savings, furnishings, and investments. Keep it up to date. Give a copy to your attorney, and to at least one other person you trust (such as a monitor if you name one)
- If you have investments, arrange for your investment advisor to keep you informed about all dealings. You can also give your investment advisor the name of a **Trusted Contact Person (TCP)**. A TCP is someone you trust who knows you well, has nothing to gain financially from you, and who is not your attorney. Your investment advisor can contact your TCP if they see signs that you may be a victim of financial abuse. A TCP does not have power over your finances and does not have access to your financial information or accounts. Talk with your investment advisor or contact the [Nova Scotia Securities Commission](#) for more information about naming a TCP.
- Read the Government of Canada's publication [Powers of Attorney and Joint Bank Accounts](#), for more information that can help you consider and manage the risks.
- Have a lawyer who does estate planning write your power of attorney. A lawyer can inform you about steps you can take to protect yourself and advise you about what to include in your power of attorney document to increase your protection from any abuse.

### What can I do if my attorney misuses the power of attorney?

Below is a list of some things you can do if your attorney misuses the power of attorney. What you do will depend on your situation and on your relationship with your attorney.

#### *Talk with a lawyer*

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At the very least, talk over your concerns with a lawyer or with someone else you trust. Get support to help you review your options and to decide what steps you want to take.

#### *Get an accounting*

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Ask your attorney to give you the records detailing how they have managed your finances and property (give you an **accounting**). Your attorney has a legal duty to do this when you ask. Review the records or ask someone who knows about finances to review them with you. If your attorney does not give you the records you need or if the records are worrying, talk with a lawyer about ways to solve the problem. If needed you, or others on your behalf, can go to court to ask the court to order your attorney to give an accounting.

# POWERS OF ATTORNEY

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If you have an enduring power of attorney and later lose capacity, your attorney can be required to account to the following people about how the attorney is managing your finances and property:

- to your monitor, if you named one, at reasonable intervals
- to your immediate family member(s), no more than once a year. This applies if you did not name a monitor, if your monitor is your attorney's spouse or partner, or if your monitor is not available or not able to ask for an accounting
- to the Supreme Court of Nova Scotia and/or to the Nova Scotia Public Trustee. The court can order the attorney to account to the Public Trustee ([www.novascotia.ca/just/pto/](http://www.novascotia.ca/just/pto/)), to another person, or to the court.

**Who can't get an accounting?** The law says that if you and your spouse or partner separate and are ending your relationship, your spouse or partner would not be entitled to get an accounting from your attorney. You can say in your power of attorney if there is anyone else you would not want to be able to get an accounting.

## *Change or end your power of attorney*

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You can end (revoke) your attorney's authority under your power of attorney and use your back-up attorney. If you did not name a back-up attorney, you can make a new power of attorney. See *the section on Changing or Ending a Power of Attorney for information*.

If you no longer have capacity to change or cancel your power of attorney someone else may need to apply to court on your behalf to deal with the situation.

## *Go to court*

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You can apply to the Supreme Court of Nova Scotia. A lawyer can help you with that. You can go to court without a lawyer if you cannot pay one. It is a good idea to get some advice from a lawyer if you can, even if you cannot pay a lawyer for full representation.

Your monitor (if you named one), the Public Trustee, or any of the following people (called **interested persons**) may also apply to court if they have concerns:

- your spouse or partner
- your adult child, grandchild, or great-grandchild
- your parent
- your adult sibling
- your adult niece or nephew
- anyone else listed in your power of attorney
- your delegate in your personal directive

- a representative of a care home where you live
- after you die, the executor or administrator (personal representative) of your estate.

If the court thinks it is appropriate, the court can:

- require your attorney to give records to the court or to another person
- require your attorney to go to court to explain why they have not met their responsibilities to you or have not followed a court order
- change the terms of the power of attorney or remove the attorney and appoint someone else to manage your affairs. There are special rules for doing these things
- end the power of attorney
- find the attorney responsible (liable) for breaching the attorney's duties to you, and require them to pay money to you or your estate, or give back property
- make any other order it thinks is appropriate.

## ***Put a fraud alert on your credit report***

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- Credit reporting agencies collect information about a person's credit and payment history — the person's credit report. The two main credit reporting agencies in Canada are [Equifax](#) and [TransUnion](#). It is important to check your credit report if you are or may be a victim of fraud — such as if your attorney has misused your power of attorney. The Financial Consumer Agency of Canada has information about how to get your free [Credit Report](#).
- You can also place a fraud alert on your credit report. A fraud alert is a 'red flag' notice on your credit report that alerts creditors you are or may be a victim of fraud, including identity theft. Contact [Equifax](#) and [TransUnion](#) for more information.

## ***Talk with the police***

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It is a criminal offence to misuse a power of attorney. If your attorney is using your property or money for their own benefit or for someone else's benefit without your consent, you should talk with a lawyer and the police.



### What your financial institution can do

A financial institution is a bank, credit union, loan or trust company, investment advisor or dealer, insurer, or insurance agent or broker.

Your financial institution may:

- refuse to follow your attorney's instructions
- suspend or limit money withdrawals or transfers from your accounts.

If your financial institution does these things they must notify you and your monitor and any other attorneys.

If you've named a Trusted Contact Person for your investments, your investment advisor may also notify your Trusted Contact Person.

## Changing or Ending A Power Of Attorney

### Can I change my power of attorney?

You can change your power of attorney as long as you are capable of understanding what it means to do that and the effects of changing it. This is called **varying** your power of attorney.



**It is better to make a new power of attorney rather than change an existing one.**

However, it is best to make a new power of attorney rather than change your existing one. A power of attorney that has changes can cause confusion. It is just as easy to make a new one because the legal requirements for making a valid change are the same as the requirements for making a power of attorney (see *Making a Power of Attorney*).

If you do change your power of attorney you must tell your attorney or attorneys in writing about the change. You should also do the following:

- Write to anyone who has been relying on your power of attorney. Tell them that you have changed your power of attorney, and what the change is. Keep copies of these letters.
- Ask everyone who has a copy of the previous power of attorney document to return it to you. Banks and some other organizations may need to keep a copy of the document for their files.
- Contact the Land Registration Office if the power of attorney is registered there. If so, your changed or new power of attorney document will need to be registered to replace the old one.

## How does a power of attorney end?

A power of attorney can end in any one of the ways listed below.

### *You revoke it in writing*

You can end your power of attorney at any time if you are capable of understanding what it means to do that and the effects of ending it. This is called **revoking** your power of attorney.



**You can revoke a power of attorney at any time as long as you are able to understand what it means to do that.**

To revoke your power of attorney you must tell your attorney or attorneys in writing. This is called giving notice of revocation. The written notice of revocation must be dated, and you must sign it. It is a good idea to have your notice of revocation witnessed by at least one independent adult who is with you when you sign it, and who also signs it.

If you revoke your power of attorney, you should also do the following:

- Write to all the people and businesses who are dealing with or have dealt with the attorney. Anyone who deals with the attorney will think the power of attorney is valid unless they are told it is not. Tell them that the power of attorney has been cancelled. You can give them a copy of your notice of revocation if you wish. Keep copies of these letters.
- Ask everyone who has a copy of the power of attorney document to return it to you. Banks and some other organizations may need to keep a copy of the document for their files.
- Contact the Land Registration Office if the power of attorney is registered there. Find out what needs to be done to put notice of your revocation on the record. You do not need to do this if the power of attorney was for a specific time period that has ended or for a task that has been completed.



# POWERS OF ATTORNEY

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## *You make a new power of attorney*

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A new power of attorney ends (revokes) any prior power of attorney you made unless you say otherwise in your new power of attorney document. An existing power of attorney and a new power of attorney must not conflict and should deal with separate matters.

Sometimes financial institutions may provide a power of attorney form that gives a specific power of attorney over funds held by that institution only. If you sign a bank form power of attorney it may revoke a general power of attorney you already have. Unless you need your attorney to deal only with that bank on your behalf, instead you may want to do a single general power of attorney document that covers everything (ideally done with a lawyer's help), to avoid confusion and disputes.

If you have assets or property outside Canada you may need a separate power of attorney that is made based on the law in that country, made by a lawyer or other legal professional in that country, and that can be used to deal with your finances and property there. If that is your situation you should also see a lawyer in Nova Scotia to make sure a power of attorney you have or make elsewhere does not revoke or conflict with a Nova Scotia power of attorney by mistake.



**A new power of attorney document may revoke an existing power of attorney, so it is very important to review and fully understand any documents you sign.**

## *Written notice by the attorney*

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Your attorney can tell you in writing that they no longer want to act as attorney. This is called resigning.

If you are capable of understanding what it means for your attorney to resign, your attorney may resign by giving their written resignation to:

- you, and
- your monitor, if you named one, and
- the other attorneys named in your power of attorney, if any.

If your attorney resigns and you did not appoint any other attorneys or a back-up attorney in your power of attorney, you should write to the bank and others and tell them that the power of attorney has been cancelled. Keep a copy of these letters. Ask your attorney to return the power of attorney document to you.

If you are not capable of understanding what it means for your attorney to resign, your attorney may give their written resignation to the following, in order of priority:

- your monitor, if you named one, and to any other attorneys named in your power of attorney
- your immediate family members and personal care delegate, only if you don't have a monitor or

- other attorneys or they are not available to be notified,
- the first available of your grandparents, grandchildren, aunts or uncles, nieces or nephews, or other relatives, only if no immediate family members are available,
- the Public Trustee, as a last resort.

### ***Loss of capacity***

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If you cannot make important decisions for yourself — you ‘lose capacity’ — your power of attorney ends automatically unless it is an enduring power of attorney.

If your attorney loses capacity and you have not named a joint attorney or back-up attorney, your power of attorney ends automatically. This is the case whether it is an ordinary or an enduring power of attorney.

When the Public Trustee is acting for someone who loses capacity, the Public Trustee will continue to act for that person.

### ***Bankruptcy***

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If you become bankrupt, your power of attorney ends, and a licensed insolvency trustee takes over all your financial affairs. A licensed insolvency trustee is a professional who manages the affairs of a bankrupt person.

If your attorney becomes bankrupt they can still act for you if they tell you in writing about the bankruptcy, and while you have capacity you agree in writing that you still want them to be your attorney. Otherwise, your back-up attorney takes over and acts on your behalf, and your power of attorney document remains in effect. If there is no back-up attorney your power of attorney ends.

### ***Time or task***

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A power of attorney can be for a specific time or task. When the time or task is complete, the power of attorney ends. For example, you might give someone specific power of attorney to sell a house. The attorney’s authority under that document would end when the house is sold.

In another example, you might give a general power of attorney while you are away on vacation. The attorney’s authority under that document ends when you return.

If a specific power of attorney allows the attorney to act over time, the power continues until it is cancelled in one of the ways listed above.

A general power of attorney may continue indefinitely or it may be for a specific time.

# POWERS OF ATTORNEY

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## *Court Order*

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If the court thinks it is appropriate, the court can end an attorney's authority or end a power of attorney. The attorney, a monitor, the Public Trustee, your attorney or another interested person would need to apply to court to ask for that to happen. A judge would hear the facts and decide what should happen.

## *Death*

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When you die, the power of attorney ends. If the attorney dies, the power of attorney ends unless you have named a joint attorney or back-up attorney.

If the Public Trustee is acting for a person who dies without a will naming an executor, they will continue to act until a court appoints someone to administer the estate. For more information go to [www.novascotia.ca/just/pto/](http://www.novascotia.ca/just/pto/).

## Other Frequently Asked Questions

### *Do powers of attorney have to be registered in Nova Scotia?*

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A power of attorney must only be registered when it gives authority to deal with land. Then it must be registered at the Land Registration Office where the land is located.

Otherwise there is no registry for powers of attorney in Nova Scotia.

### *Is a power of attorney made outside of Nova Scotia valid here?*

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If you have a power of attorney or similar document from outside Nova Scotia that gives someone power to deal with your finances and property for you, and it was valid in that place, it is considered a valid power of attorney in Nova Scotia. You do not need to make a Nova Scotia power of attorney.

If you are not sure or if you have questions, ask a Nova Scotia lawyer to look at your document to see if it meets the requirements of the law here.

### *Is my power of attorney valid outside of Nova Scotia?*

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If your attorney may need to use the power of attorney outside Nova Scotia, check with a lawyer to see if you should write another power of attorney for that province or country. If you have assets or property outside Canada you may need a separate power of attorney that is made based on the law in

that country, made by a lawyer or other legal professional in that country, and that can be used to deal with your finances and property there. Canadian powers of attorney may also need to be authenticated for use outside Canada, depending on the legal requirements of the particular place. Contact the Nova Scotia Department of Justice, Authentication Services, or Global Affairs Canada, Authentication Services if your power of attorney needs to be authenticated for use outside Canada.

## ***I made a power of attorney before July 5, 2022. Do I need to replace it?***

The law in Nova Scotia on powers of attorney changed on July 5, 2022. If you made a valid power of attorney before that date it is still valid under the new law. You don't need to make a new power of attorney just because the law has changed. You can make a new one if you wish though. It is a good idea to review your power of attorney and your whole estate plan whenever you have big changes in your life, and at least every few years.

## ***Where should I keep my power of attorney?***

You should put your power of attorney document in a safe place. A fire-proof location is the best place. Make sure you tell your attorney where the document is stored so that they can find it if it is needed.

If you want your attorney to start using the power immediately, give it to them. Or give it to them and tell them when they should start acting. Keep a copy for yourself in a safe place. Give a copy to your bank, credit union or trust company, and to any other parties that your attorney will deal with for you. Keep a list of the businesses and people who have copies of your power of attorney in case you must make any changes or want to revoke it.

If you have a power of attorney that may not be used for a while, perhaps never, do one of these things:

- Put it in a safe place that your attorney can access quickly, if they need to, and tell them where it is.
- Leave it with another person you trust, such as your lawyer, and give clear instructions about when to release it. Remember, though, that this person could die or move away.
- Give it to your attorney to keep in a safe place until it is needed.



# POWERS OF ATTORNEY

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If you only have one signed original of the power of attorney document, do not put your power of attorney in a safety deposit box that is in your name only, as your attorney may not be able to get access to it quickly. If you have another original or a notarized copy you can leave one in a safety deposit box. Think about adding the attorney's name to the safety deposit box as well for ease of access.

It may be many years before your power of attorney is needed, if it ever is needed. As time passes, keep track of where you are keeping your power of attorney. Tell the people in your life who need to know about your power of attorney where to get it when and if it is needed.

## *Where can I get more information on power of attorney?*

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**A lawyer.** It is a good idea to speak with a lawyer who focuses on estate planning, and if possible, a lawyer who has a Trust and Estate Practitioner or “TEP” designation. See the Legal Information Society of Nova Scotia website at [www.legalinfo.org](http://www.legalinfo.org) for information about ways to find a lawyer.

### **Legal information or a referral to a lawyer in private practice**

Legal Information Society of Nova Scotia (LISNS)

Legal Information Line

902-455-3135 | 1-800-665-9779

Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)

LISNS has online information about powers of attorney at [www.legalinfo.org](http://www.legalinfo.org)



# Public Trustee

The Public Trustee's Office can manage the financial and health care needs for some people when no one else is willing, suitable, or able to act. It is independent of the provincial government.





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**

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# What is the Public Trustee?

The Nova Scotia [Public Trustee's Office](#) has the authority to manage the financial and health care needs for certain people when no one else is willing, suitable, or able to act. It is independent of the provincial government.

The Public Trustee can act as:

- a representative for an adult,
- a guardian for a child,
- a custodian or trustee of a person who cannot care for their own affairs, or
- the executor or administrator of the estate of a person who has died.

It gets its power from Nova Scotia's [Public Trustee Act](#).

## What can the Public Trustee do?

The Public Trustee often acts when no one else is able to take responsibility for a person's estate.

The Public Trustee can act as a trustee for a person under the age of 19 who receives money in an insurance settlement or inheritance or as a named beneficiary, but does not have a parent or guardian who was named as a trustee to manage the money.

The Public Trustee can serve as a **representative** for an adult who cannot manage their own finances and has not given someone power of attorney to act for them.

The Public Trustee looks into complaints about a representation order being misused. If you wish to make a complaint to the Public Trustee, you can call them at 902-424-7760 or send an email to [publictrustee@novascotia.ca](mailto:publictrustee@novascotia.ca).

The Public Trustee can apply to the Probate Court to manage the estate of a person who has died.

The Public Trustee can make health care decisions for a person who is not able to understand the risks, benefits, or the consequences of an important decision about their health. They will do this only if no one else can. If a patient has not named someone to make these decisions and has no representation order, the health care provider will speak with the patient's family about giving consent to treatment. If no one can or will make these health care decisions, the health care provider will contact the Public Trustee as a last resort. The Public Trustee will review the request. They will try to learn if the patient has ever expressed any wishes about the medical treatment. They will try to make a decision that respects the patient's values, beliefs and wishes. If the patient's values, beliefs and wishes are not known, the Public Trustee will make a decision that is in the best interests of the patient.

You can find more information in the following chapters of this book: *Adult Capacity and Decision-making*; *Powers of Attorney*; and *Health and other Personal Care Decisions*.

## Is the Public Trustee required to represent everyone who asks for its help?

No. The Public Trustee accepts cases based on the facts. Some things it will not do are the following:

- help a family solve a disagreement
- be responsible for a person's physical care and well-being.

## What does the Public Trustee cost?

Depending on the services provided, the Public Trustee can charge the same costs and fees as a lawyer. In some cases, a judge will say what the Public Trustee can charge for its work. The fee for some services is based on a percentage of the person's estate and is set out in the regulations under the [Public Trustee Act](#).

Usually the Public Trustee's costs and fees are paid from the estate of the person. Sometimes a judge will order that another person pay. The accounts of the Public Trustee are audited every year.

## Where can I get more information about the Public Trustee?

You can get further information about the work of the Public Trustee's Office online at [novascotia.ca/just/pto/](https://novascotia.ca/just/pto/)

You can also get in touch with the Public Trustee's Office at:

### Public Trustee's Office

Suite 501-1465 Brenton St.

P.O. Box 685

Halifax, NS B3J 2T3

Tel: (902) 424-7760

Email: [publictrustee@novascotia.ca](mailto:publictrustee@novascotia.ca)

### Public Trustee - Health Care Decisions Division

Phone: (902) 424-4454

Fax: (902) 428-2159

Email: [PublicTrusteeHCD@novascotia.ca](mailto:PublicTrusteeHCD@novascotia.ca)

# Scams, Identity Theft & Other Fraud

Fraud is a growing crime in Canada. People of all ages are scammed, but especially older adults. Fraud victims nearly always lose money. The internet makes fraud easier to commit and to get away with. But you can protect yourself from fraud.





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If you suspect that you may be a target of fraud, or if you have already sent funds, don't be embarrassed — you're not alone. If you want to report a fraud, or if you need more information, contact the Canadian Anti-Fraud Centre at [antifraudcentre-centreantifraude.ca](https://antifraudcentre-centreantifraude.ca) or 1-888-495-8501.

## What is fraud?

**Fraud** is intentional deception. Fraud is a crime. Some types of fraud are referred to as **scams** or schemes. Fraud affects all age groups. Fraud usually causes financial loss for the victim. The internet has created new opportunities for fraudsters.

The person who is deceived is generally called the victim or mark. The person who does the deceiving is generally called a **fraudster**, a scam artist, a perpetrator, or a thief.

Fraud can be very profitable for criminals. Fraudsters are hard to catch because they are skilled at what they do, may manage to disappear before being caught, and they may not even be in Canada. Victims are often too embarrassed to tell anyone, and so many frauds do not get reported.

## What is consumer fraud?

Consumer fraud is intentionally deceiving a person who buys a product or a service. For example, you are deceived into paying money for something that does not exist, is not accurately described, or is of little or no value. Another example is being deceived into providing information that allows a fraudster to steal from you.

Consumer fraud happens when a person, a group, or a company takes advantage of individuals, usually for monetary gain.

### How does consumer fraud happen?

Fraudsters approach their victims in many ways:

- coming door to door
- calling on the telephone
- sending mail through the postal system
- sending emails, using social media, or other online services
- meeting in a coffee shop, club, place of worship or another place.

They may attract you with a TV commercial, a magazine article, a newspaper advertisement, a website, a survey, or through social media.

A fraudster can cause you financial loss without having to make any personal contact with you. They are always thinking of new and different scams to take advantage of people.

## What are common kinds of scams?

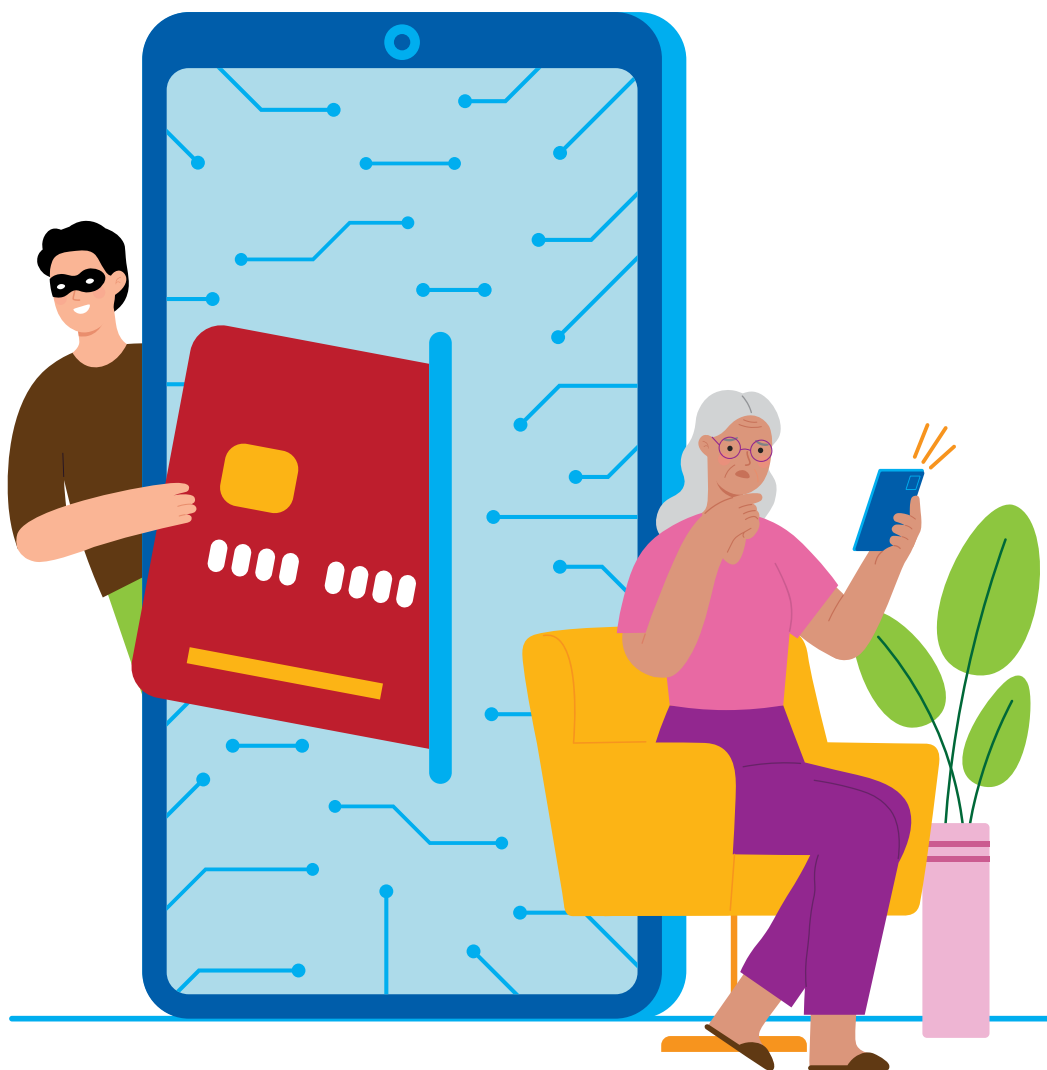
Unfortunately, there are so many types of scams they cannot all be listed here, and it is also difficult to guess what the next new scam will be. Examples of some of the more common consumer fraud scams include:

- **Identity Theft:** The fraudster uses your personal and financial information to steal from you. This is the top fraud across North America.
- **Advance Fee Fraud:** You are asked to make a payment or to give your personal or financial information before you receive a product or service.
- **ATM, Credit Card, and Debit Card Fraud:** The fraudster uses your pass codes and card numbers to withdraw cash from your accounts or to pay for purchases with your credit.
- **Counterfeiting:** The fraudster pays for purchases with fake money, cheques, or money orders.
- **Door-to-door frauds:** The fraudster comes to your door and says “I was driving by and noticed that your roof needs repair.” Or “I have some left-over materials I can sell you at cost.” Or “I’ll need a 50% down payment to purchase materials.” Always check with the [Better Business Bureau](#) or a neighbour who has used them before hiring any person to do work on or in your home.
- **Emergency:** The fraudster pretends to be someone close to you and tells you they need money right away due to a fake emergency, such as being arrested and needing bail money, being in a car crash, or having trouble travelling back to Canada. Grandparents are particularly vulnerable to this type of fraud, as the scammer may pretend to be a grandchild who claims to urgently need money.
- **False Charities:** The fraudster pretends to be a charity (sometimes by using a similar name, thanking you for your past support, or by trying to take advantage of a disaster such as a flood or hurricane). Sometimes the fraudster will go door to door pretending to collect donations for a charity.
- **Impersonation:** The fraudster pretends to be someone or something else for personal gain; for example, someone pretends to be a grandchild who needs money.

## SCAMS, IDENTITY THEFT & OTHER FRAUD

- **Investment Fraud:** The fraudster misleads you into giving money for business ventures that promise unrealistic profits.
- **Misleading Job Opportunities:** The fraudster promises a large income for easy work, a fee or a start-up investment, or an almost guaranteed job after an expensive course.
- **Online Auctions, Lotteries, and Contests:** The fraudster tricks you into purchasing items of little or no value, or into buying tickets or prizes that do not exist or have little value.

Contact the [Canadian Anti-Fraud Centre](#) and [Consumer Affairs Canada](#) for more information about current scams, including COVID-19 scams. See “Where can I get more information” at the end of this chapter for contact information.



# Recognizing fraud

If it sounds too good to be true, it usually is. Here are some things you can look for that will sometimes point to a scam:

- contact from strangers looking to offer you a deal
- over-excited callers using a lot of pressure
- people pushing you for immediate answers or confirmation of a deal
- people who insist that you not tell anyone else about the deal
- people who discourage you from getting any advice or advice only from a person they suggest
- any deal in which what you earn will be based on how many people you involve in the deal
- people who will not send you any information until you give them money or information
- any deal where you must pay a fee or buy something before you receive a prize, credit, or product that you did not order
- prices so low they are unreasonable compared to their true value
- any reward, prize, or payment (usually very large) you are promised in exchange for your banking information
- contact from people, businesses, or creditors that you do not know
- people claiming to represent a charity that you do not know or that has a name very close to a charity that is well-known
- companies that try to sound like a well-known agency or company
- people contacting you for your credit card, calling card, banking information, or social insurance number
- any claim that you have won a prize for a contest you have not entered
- people saying they are calling from your bank and asking you to provide information about your account to help them catch a fraudster.

# What is identity theft?

Identity theft is getting your personal information and using it to steal from you. Identity theft is now the fastest-growing fraud.

Personal information might include your address, date of birth, social insurance number (SIN), credit card or bank card numbers, personal identification numbers (PINS) and pass codes, and driver's license numbers. If identity thieves get your personal information, they may:

- take money out of your bank accounts
- charge purchases to your credit cards
- apply for new credit cards or loans in your name
- buy expensive items on credit in your name.

In extreme cases, identity thieves not only collect personal information about you, but they may also watch you. They learn about your friends and family members, and learn your personal weekly routine. Then they decide how best to take advantage of you. Sometimes they pretend to be stranded family members who urgently need money. Sometimes they pretend to be you and arrange to mortgage or sell your house.

## How do identity thieves get personal information?

Here are some of the ways identity thieves can get your personal information. They may:

- steal it from your wallet or purse, home, mailbox, workplace, vehicle, or computer
- go **phishing**, which means sending you an email threatening serious consequences if you don't update information on a website at once. This gets you to go to the website so that they can get personal information such as passwords and access codes from you.
- pretend to be someone entitled to request information (such as a government official, bank employee, landlord, creditor, or employer)
- collect it from your garbage. For example, bank and credit card statements, copies of credit or loan applications, financial statements, and tax returns.
- redirect your mail, open it, and then put it in your mailbox
- rig automated teller machines (ATMs) and debit machines so your debit or credit card number and PIN can be read

- shoulder surf — hang around your shoulder to watch as you punch your access codes and passwords into ATMs, debit machines, telephones, and computers
- buy or trade customer mailing lists
- search obituaries, phone books, directories, and other public records
- place false advertisements for jobs to obtain your résumé and contact information
- pretend your personal details are needed to claim a prize or lottery winnings
- use letterhead that looks like it comes from a government department or financial institution to get personal information from you.

## Protecting yourself from fraud

The best way to protect yourself from fraud is to be informed and alert.

- Protect your personal financial information. Do not give any of your banking or credit card information to anyone you do not know and trust. Do not write down your PIN.
- Cover the keypad or keyboard when you are entering your passwords and passcodes and look around you to make sure that no one is looking over your shoulder.
- Check before making purchases when you are not dealing face to face with someone you know, ask for a name and contact information, and make sure the person is who they claim to be.
- Get at least two written quotes for all repair work; ask for references and check them; check for complaints at the Better Business Bureau; and don't agree to pay all the money up front.
- Be aware that police and financial institutions never call or email you to ask for your bank card information, credit card details, or banking details.
- Do not provide more personal information than is necessary for your business.
- Only give your SIN when absolutely necessary, and do not carry your SIN card with you. Businesses such as stores should not be asking for your SIN number.
- Do not give your address and phone number unless there is a good reason.
- Carry only the documents and cards you need.
- Do not leave your purse or wallet unattended.
- If you are paying by debit or credit card, make sure that your card number does not appear on the receipt.

## SCAMS, IDENTITY THEFT & OTHER FRAUD

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- If you are paying with a debit or credit card in a restaurant, keep your card in sight. Arrange to pay at your table or go with the server to process the card.
- Shred receipts and copies of papers you no longer need such as bank statements, tax returns, credit applications and statements, receipts, insurance forms, and credit offers you get in the mail.
- Do not leave personal information sitting around at home, in your vehicle, at your workplace, or on your computer.
- Keep important documents such as your birth certificate, tax returns, and social insurance card in a secure place.
- When you receive renewal documents and cards, destroy the old ones and sign the new ones right away.
- Know when your credit card and financial statements and utility bills are supposed to arrive in the mail.
- Keep credit card, debit card, and ATM transaction records so you can match them to your statements.
- Check your bank and credit card statements carefully to make sure that there are no withdrawals or charges that you were not expecting.
- Update your credit cards to ones that have the latest security features, for example, “chip cards” which require a PIN because they are embedded with a micro-computer chip.
- Let your credit card company know when you are leaving the country. Your credit card company should contact you if there is unusual activity on your card such as stays at international hotels.
- Lock your mailbox.
- Pick up your mail promptly.
- Do not pick pass numbers (for your credit card, bank account, etc.) that refer to your personal information (like your birth date or SIN).
- Do not pick passwords that can easily be guessed such as the name of your pet.
- Use spyware filters, email filters, and firewall software on your computers.



- If you use secure internet sites for financial transactions, follow security instructions when you enter and leave the site. Under the “Tools” section in your web browser, click “Clear Recent History” when you are done.
- Be sure all personal information is deleted before you sell, recycle, or discard your computer. You may have deleted files, but the information may still be on the hard drive.
- Consider signing up with the [National Do Not Call List](#), which prohibits most businesses that you don’t deal with from contacting you by phone.

### What can I do if I think that I am the target of fraud?

If you suspect that you are the target of fraud, do not deal directly with the person you think is trying to deceive you. Do not agree to provide further money to get your first payments back or to keep a deal open.

You can contact your local police or RCMP detachment and the [Canadian Anti-Fraud Centre](#). You may also report the crime online through some of the websites listed at the end of this section under “More Information”.

You should also contact [Equifax Canada](#) and [TransUnion Canada](#). They are [credit reporting agencies](#). They can place an alert on your account so creditors must call you before opening any new accounts or changing your existing accounts. Also, ask them to send you a [copy of your credit report](#) so you can see if an identity thief has opened any new accounts or debts in your name. The [Financial Consumer Agency of Canada](#) has information about credit reports, and credit reporting agencies. See “Where can I get more information” at the end of this chapter for contact information.



## What if I am a victim of fraud?

If you have been the victim of fraud, you must contact the financial institutions and credit card companies where you have your accounts. Tell them what happened and have them freeze your accounts. If the fraud has affected your account, it must be closed. You will need to open new accounts.

You should contact the police or RCMP to report that you have been the victim of fraud, no matter how small your loss may be. They may start an investigation.

You should also contact [Equifax Canada](#) and [TransUnion Canada](#). These credit reporting agencies can place an alert on your account so creditors must call you before opening any new accounts or changing your existing accounts. The [Financial Consumer Agency of Canada](#) has information about credit reports, and credit reporting agencies.

Report the fraud to the [Canadian Anti-Fraud Centre](#).

If your government-issued documents were lost or stolen, contact the department, explain what happened, and ask for new documents. You will likely need to do that in writing. Contact Service Canada at [canada.ca](#) or 1-800-206-7218 if your [social insurance number](#) (SIN) has been stolen.

If you think your mail is being stolen or redirected, contact Canada Post at 1-800-267-1177 or [canadapost.ca](#).

## Quick Tips

- **Know the source.** This means checking into a website before handing over any personal information – especially personal financial information. This doesn't mean you can't shop or surf at unknown sites, but make sure you've done your homework before exchanging information.
- **Read your email carefully.** Many fraudulent offers come in the form of e-mails because the Internet makes it possible to send thousands at a relatively low cost. Use a mail program that allows you to screen out these mass mailings, and you'll spend less time with your finger on the delete key.
- **Deal only with reputable organizations,** and don't give out personal or financial information unless you are sure you're in a secure environment. Don't judge reliability by how nice or sophisticated the website may seem.
- **Be careful at auction sites,** one of the areas that generate a lot of complaints.

## SCAMS, IDENTITY THEFT & OTHER FRAUD

- **Understand as much as possible about how the auction works**, what your obligations are as a buyer, and what are the seller's obligations.
- **Find out what the website/company does** if a problem happens and consider insuring the transaction and the shipment.
- **Learn as much as possible about the seller**, especially if the only information you have is an e-mail address. If it is a business, check the Better Business Bureau where it is located. Examine the feedback on the seller. Remember because of the difference in laws, it may be much harder to solve a problem if the seller is located outside Canada.
- **Find out if shipping and delivery are included** in the auction price or are additional costs. If they are extra, find out exactly how much you'll be charged.
- **Don't give out your social insurance number or driver's license number.**
- **Don't give out your credit card number(s) online unless the site is secure and reputable.** Sometimes a tiny padlock appears on the screen. This symbolizes a higher level of security to transmit data. While not a guarantee, it may provide you with some assurance.
- **Don't invest in anything you are not absolutely sure about.** Do your homework on the investment to make sure that it is legitimate.
- **Be skeptical of individuals representing themselves as Nigerian or foreign government officials** asking for your help in placing large sums of money in overseas bank accounts.



# Where can I get more information?

- **The Canadian Anti-Fraud Centre** online at [antifraudcentre-centreantifraude.ca](https://antifraudcentre-centreantifraude.ca) or call 1-888-495-8501. The centre collects information and criminal intelligence on issues like mass marketing fraud (e.g., telemarketing), advance fee fraud (e.g., West African letters), internet fraud, identity theft, and COVID-19 frauds and scams
- **Investor Rights and Protection Guide** from the Legal Information Society of Nova Scotia, at [legalinfo.org/guides/investor-rights-and-protection-guide/](https://legalinfo.org/guides/investor-rights-and-protection-guide/)
- **The Financial Consumer Agency of Canada:** [canada.ca/en/financial-consumer-agency.html](https://canada.ca/en/financial-consumer-agency.html) or 1-866-461-3222. Information about identity theft, types of fraud, counterfeit money and other threats or scams; protecting yourself from fraud; reporting fraud.
- **The Spam Reporting Centre**, which oversees Canada's Anti-Spam law, at [fightspam.gc.ca](https://fightspam.gc.ca) or 1-800-328-6189 also takes reports of suspicious or unsolicited emails (e.g., phishing, malware, deceptive marketing, etc.).
- **Get Cyber Safe:** Federal government site all about staying safe online for individuals and businesses: [getcybersafe.gc.ca](https://getcybersafe.gc.ca)
- **CyberScan:** for information and help if someone is bullying you, sharing private images of you without your consent, or pretending to be you online or by text or email contact CyberScan at [novascotia.ca/cyberscan/](https://novascotia.ca/cyberscan/) or call 902-424-6990 or 1-855-702-8324.
- **Service Canada** at 1-800-206-7218 if your social insurance number (SIN) has been stolen.
- **Industry Canada's Office of Consumer Affairs**, a federal government department that gives consumers tips about how to protect themselves in various consumer situations: [canada.ca/en/services/finance/consumer-affairs.html](https://canada.ca/en/services/finance/consumer-affairs.html).
- **Competition Bureau of Canada:** A federal government agency concerned about competitive markets and consumer information. It investigates complaints and enquiries from the public about consumer issues such as deceptive product labelling and price fixing: [competitionbureau.gc.ca](https://competitionbureau.gc.ca). Their 'Little Black Book of Scams' is easy to use and can help you protect yourself against common scams.
- **National Do Not Call List** (Canadian Radio-Television and Telecommunications Commission): If you have complaints about a telemarketer or wish to register a number on the Do Not Call List. Website: [lnnte-dncl.gc.ca](https://lnnte-dncl.gc.ca), or call 1-866-580-3625. To use the National Do Not Call service, you must call from the phone number you wish to register.

## SCAMS, IDENTITY THEFT & OTHER FRAUD

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- **Service Nova Scotia consumer information:** Call 1-800-670-4357.
- **Better Business Bureau of the Atlantic Provinces:** Tips for consumers; lists of BBB-approved businesses and charities; complaints; information for businesses: visit [bbb.org](http://bbb.org) or call 1-877-663-2363.
- **Nova Scotia Registry of Joint Stock Companies:** 1-800-225-8227 (toll-free), or 902-424-7770.
- **Reporting Economic Crime On-line (RECOL)** An association that allows you to file fraud complaints online. [www.recol.ca](http://www.recol.ca)
- **To get a current copy of your credit report, contact Equifax Canada** — [equifax.ca](http://equifax.ca) or 1 800-465-7166 or TransUnion Canada — [transunion.ca](http://transunion.ca) or 1 800-663-9980
- **Nova Scotia Department of Seniors:**  
Email: [seniors@novascotia.ca](mailto:seniors@novascotia.ca)  
Information line: 1-844-277-0770 (toll-free in Nova Scotia)  
Website: [novascotia.ca/seniors](http://novascotia.ca/seniors)
- **211 information and referral service.** To learn about programs and services for Nova Scotia seniors, call 2-1-1 or visit their website, [ns.211.ca](http://ns.211.ca).

### General legal information

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](http://www.legalinfo.org)

# Wills

Writing a will is a good idea. A will gives you peace of mind and makes it easier for family or friends to handle your affairs when you die.





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## What is a will?

A will is a legal document that lets you say what you want done with your estate after you die. Your estate is your house, land, and personal things like jewellery and artwork. A will also lets you name an executor, who is the person you name in your will to carry out your final wishes. A will has no legal effect until you die.

A person who makes a will is called a testator. The people you name in your will to get money or gifts after you die are called beneficiaries. Charities can also be beneficiaries.

## What is an estate?

After you die, your assets together are called your **estate**.

Your **assets** are anything worth money. For example:

- your house or condo
- any other land you own
- bank accounts
- investment accounts and GICs
- valuable jewelry
- valuable artwork
- other household and personal items
- your vehicles.

Pets are also assets, as the law thinks of animals as personal property.

### Assets that are not part of your estate

Your estate typically excludes:

- assets with a named beneficiary. Here are some examples:
  - registered savings accounts that let you name someone to get the money directly, like RRSPs, RRIFs, and tax free savings accounts (TFSA)
  - pension plans
  - life insurance policies.

# WILLS

- property that you own jointly with someone else, with right of survivorship. For example, if you and your spouse own your home as *'joint tenants and not as tenants in common'*, the home goes directly to your spouse on your death.

When you die, these types of assets are said to “pass outside the will”. For example, the bank or trust company transfers the RRSP or RRIF, or pays it out, to the beneficiary you named. This payment does not take into account tax consequences, which must be paid out of the assets that pass through your will. The same is true if you have life insurance that names a beneficiary, although typically there are no tax consequences for life insurance proceeds. If you name your estate as beneficiary instead of a person or charity, the money goes to your estate and will be distributed as you direct in your will.

Assets you share with a spouse or minor children go to the surviving owners when you die. Shared assets with anyone else, including adult children, are not automatically assumed to go the survivor owner, so you should clearly set out in writing what you want to happen with those assets on your death and who should benefit from them. For jointly owned accounts, on your death the account may legally pass to the joint owner according to the financial institution paperwork. But be aware that the joint owner may then have a legal responsibility to share that account with other beneficiaries of your estate. If you want to leave assets to family members other than your spouse or minor children by joint ownership, [see a lawyer](#).

You should check to make sure you know how assets with a named beneficiary and shared assets are set up, and who will benefit when you die:

- Contact your bank to find out about your jointly owned bank accounts.
- Look at the deed to any property you have (house, land, condo) to see if you own the property with another person (called *'joint tenancy with right of survivorship'*, which is different from *tenancy-in-common*), and make sure you understand what that means.
- Check with your bank or trust company to see who benefits from your RRSPs, RRIFs, and TFSAs, other investments, or life insurance when you die.



Also ask if you can name a back-up beneficiary (also called an “alternate beneficiary”) for those assets that permit it. If you don’t do this and the beneficiary you named dies before you or at the same time as you, these assets go into your estate and are given out based on what you say in your will, or based on the law that applies if you die without a will (Intestate Succession Act).

If you are not sure about who will benefit from these assets when you die, [see a lawyer](#).

## Debts

If you owe debts when you die, like unpaid credit card bills and income tax, your executor must first pay your debts out of what is in your estate. Only what is left after all debts are paid may then be given out based on what you say in your will.

Secured debts (for example, a mortgage) and a surviving married spouse’s or registered domestic partner’s interest in the matrimonial home have priority.

If the estate does not have enough assets to pay all the estate debts, the estate is called insolvent. Debts for an insolvent estate must be paid in the following order of priority:

- taxes owed to the Canada Revenue Agency
- funeral expenses including a reasonable headstone
- probate taxes and court fees
- executor’s commission and legal fees (treated equally)
- reasonable medical expenses in the last 30 days of the will-maker’s life
- all other debts.

## Why make a will?

It is a good idea to have a will, even though Nova Scotia law does not say that you must make one. Making a will should give you peace of mind. A will makes it easier for family or friends to handle your affairs when you die.

There are many good reasons to make a will. A will lets you:

- deal with your important things the way you want to,
- give some or all of your estate to your common law partner. Without a will only married spouses and registered domestic partners inherit,

- give something to a friend, a charity, stepchild, a relative through marriage, or to someone else you care about. Without a will only married spouses, registered domestic partners, blood relatives or legally adopted persons inherit,
- name someone who will carry out your wishes,
- name someone to care for children or others who depend on you,
- make sure your pets or other animals will be cared for,
- save money and time by stating your wishes,
- save taxes
- arrange how a business you own will be handled
- help your family and friends handle your affairs after you die,
- lessen stress for your family and friends,
- lessen confusion about your wishes, and
- prevent possible disputes over your possessions.

## What happens if I die without a will?

Nova Scotia has a law called the [Intestate Succession Act](#). This law directs what happens if a person dies without a will. Intestate means a person who dies without a will.

If you die without a will, or you have a will but it is not legally valid, your property is distributed to the people considered to be your nearest relatives as listed in the Intestate Succession Act. The rules are not flexible. The distribution may be different from what you would want.

The basic rules are:

- If you are survived by your legally married spouse and had no children, all your property goes to your spouse.
- If you are survived by your legally married spouse and you had one child, the first \$50,000 goes to your spouse. The rest is equally divided between your spouse and child.
- If you are survived by your legally married spouse and more than one child, the first \$50,000 goes to your spouse. One-third of the rest would go to your spouse, and two-thirds of the rest to your children.

- If you are survived by your children, but no legally married spouse, your whole estate would go to your children, with each getting an equal share.
- If you had no legally married spouse or children, your whole estate would go to your nearest relatives by blood or adoption, by order of priority as listed in the *Intestate Succession Act*. Relatives by marriage are not included.
- Your estate would only be paid to the government if you have no surviving relatives in your family tree.

A surviving legally married spouse will always get up to \$50,000 from the estate before anyone else. If your surviving legally married spouse is not a joint owner of the family home, they may choose to take the home and household contents instead, or as part of, the \$50,000.

The *Intestate Succession Act* gives no protection for common law partners, stepchildren, or grandchildren. So, it is especially important to make a will if you want your common law partner, stepchildren, or grandchildren to inherit something from your estate when you die.

Here's why:

- If you die without a will, only your surviving married spouse or registered domestic partner can inherit. Common law partners are not included as a 'spouse' under the *Intestate Succession Act*. Your common law partner will not automatically inherit your property or money that is only in your name. Your common law partner may have to go to court to make a claim on your estate and may not be successful.
- If you die without a will, only your biological and legally adopted children can inherit. Stepchildren are not included. They would have to go to court to make a claim on your estate, and they may not be successful.
- If you die without a will, your grandchildren will only inherit from your estate if their parent (your child) died before you.

If you die without a will, there will be extra steps in the process of settling your estate, which will mean additional costs and delays. This may add to your family's pain and distress. It will also mean that there will be less left to distribute.

Someone will have offer to look after your estate. The person must apply and be appointed by a court as an administrator. That person may not be someone you would have chosen. That person will have to be bonded for 1.5 times the value of your estate, which is often costly and can be challenging to put in place.

The intestate law also applies if you do not deal with all your property in your will, either intentionally or unintentionally. In this case you are said to die partially intestate. The part of your estate not covered in your will is distributed according to the *Intestate Succession Act*.



**Note: If you are a person registered under the *Indian Act* (status Indian) who usually lives on a reserve or Crown lands and you die without a will, the federal *Indian Act* determines who will settle your estate and who will receive your assets. The distribution is a bit different from Nova Scotia's *Intestate Succession Act*. In general, an estate worth \$75,000 or less goes to the surviving spouse, including a common law spouse, and if it is over \$75,000 it is divided among the surviving spouse and children in portions that vary depending on how many children there are. If there is no spouse or children, other family members can inherit.**

## Wills for persons registered under the Indian Act who usually live on reserve

The federal Indian Act has rules for making wills that apply to persons registered under the Indian Act who usually live on reserve. The Indian Act does not apply if you have status under the Indian Act and live off-reserve, or if you do not have status under the Indian Act and live on-reserve. Provincial laws apply instead.

If you have status under the Indian Act and ordinarily live on a reserve, you can get information about making a will from:

- Indigenous Services Canada online [www.canada.ca/en/indigenousservices-canada.html](http://www.canada.ca/en/indigenousservices-canada.html), then 'Treaty annuities, estates and trusts', and 'Estate services for First Nations'
- the Confederacy of Mainland Mi'kmaq (CMM), Mi'kmaw Wills and Estates series which includes:
  1. Book One: How to Write a Will
  2. Book Two: How to Settle an Estate
  3. Book Three: How to Write a Power of Attorney and Personal Directive
  4. Mi'kmaq Wills and Estates & Matrimonial Real Property.  
Go to [cmmns.com/program/wills-estates/](http://cmmns.com/program/wills-estates/) for more information.
- a lawyer who does wills and estates law, and who knows about Aboriginal law and the rules that apply to wills for persons registered under the *Indian Act* who usually live on reserve.

## Do I need a will if my partner or spouse has one?

Yes, especially if you own anything on your own and if you want someone specific to inherit it. This includes items of sentimental or personal value, such as keepsakes, or plans, such as arranging for the care of pets and other animals in your care. You might die before your partner or spouse, or you could die at the same time in an accident. A will is the best way to let your wishes be known. You can each have a will that mirrors the other's will. Mirror wills are separate wills with identical terms.

## Do I have to hire a lawyer to write my will?

A will is a powerful legal document. In Nova Scotia you can write a will with the help of a lawyer or without a lawyer; the law does not say that a lawyer must write your will.

However, it is always best to have a lawyer write or at least review your will. A lawyer will help you make sure what you want is set out clearly and in proper order. A lawyer can save a lot of trouble and expense for the people who should benefit from your will and for the person you name as your executor.

You should have a lawyer read any document that may affect your will. Examples are a separation agreement, shareholder agreement, court order, or beneficiary designations you make on investments and life insurance.

You should talk with a lawyer no matter what you put in your will. But some situations are more difficult than others. Having a clear will makes all the difference in the world to the people who depend on you.

Your will must be worded carefully. A lawyer can:

- make sure your will clearly describes your wishes
- make sure your will follows the law
- help you deal with things that you might not have thought about
- tell you what you can do now to make it easier for your executor to deal with your estate after you die
- answer any questions about the process of dealing with your estate
- give proof in the future that you made your will by your own free choice, without pressure from anyone else, and
- give proof in the future that you had testamentary capacity (were “of sound mind”) to make your will.

A lawyer can also help with:

- Family pressure. You might feel that a family member or other person is pressuring you to leave money or property to them in your will. You can talk to a lawyer about this.
- Worries about family members. You might worry that someone who depends on you will not be able to manage their financial affairs if you die before them. In these cases, you can talk with the lawyer about how to best provide for that person.



## What does it cost for a lawyer to do a will?

Lawyers usually charge a fee based on how much legal service you need and how complex the will is. The cost to do a will can begin at less than \$400 and go up. Lawyers often charge a flat fee for doing a will. Some lawyers offer estate planning package deals.

In a package deal, the lawyer might write your will, a power of attorney, and a personal directive and charge a lower cost than for doing the three individual documents at separate times. You should talk about fees before you decide to hire a lawyer. You should talk over the cost if you prepare the will yourself or if you want the lawyer to prepare it.

Please [contact us](#) to see if we can put you in touch with a lawyer who does wills & estates work, or [go here for other ways to find a lawyer](#).

# Common parts of a will

The will contains your instructions about what you want done with your property after you die. The language should be clear and simple, so no one is confused about what you meant.

A will should have several sections, called clauses:

## Revocation

The will should say that you revoke, or cancel, all previous wills and codicils. A codicil is a document that changes a will.

## Appointment of an Executor

In your will, you should name someone as your executor and name a back-up executor. Your executor carries out your wishes as set out in your will when you die. Your executor must make sure they know what all your assets and debts are, pay your debts out of your assets, and then distribute what is left in your estate based on your instructions in your will. *More information about the executor's role is below, at 'Who looks after my will when I die?'*

## Disposal of Property (Specific Gifts)

This section of the will says who will get specific property (for example, a cottage, an antique car, valuable artwork, valuable jewelry, a specific amount of money) or property generally, and under what conditions.

A will comes into force only after your death. Until you die, you can deal with your property as you wish. For example, if you leave your cottage to your niece in your will, you could still sell it before you die and use the money as you wish. The will can only dispose of property that you still own at the time of your death.

As well, if you are leaving property to someone, you may want to say what should happen if they die before you or at the same time. For example, if you leave the cottage to your cousin, do you want your cousin's children to inherit it if your cousin dies before you or do you want the property to go to someone else?

## Residuary Clause

Your will should include a residuary clause. This clause says what you want done with all your assets that are left after taxes, debts and expenses are paid and specific gifts have been given out.

If your will does not have a residuary clause, the remaining property (called the residue) will be treated as if you had died without a will. This means it will be distributed according to a provincial law called the *Intestate Succession Act*.

## Other Clauses

A will may contain other clauses to suit your needs. For example, you may want to recommend a guardian for your children (although it is better to do that in separate child guardianship document), name a caregiver for your pets and leave that person a gift of money to thank them or to help with the expenses of taking care of your pet, create a trust fund, or set out the powers of the executor.

## Legal requirements of a will

The Nova Scotia [Wills Act](#) has certain legal requirements to make a will valid. Your will must meet all the legal requirements to be valid. The legal requirements are listed below.

**Age:** In Nova Scotia, you must be 19 years old or older to make a will. There are a few exceptions. For example, a person under 19 can make a will if they are or were married.

**Capacity:** You must be mentally competent to make a will. It is also called having **testamentary capacity**. This basically means that at the time you sign your will you must:

- know that you are making a will and understand what a will is,
- know what property you own and have a general idea what it is worth
- know how much money you owe; and
- be able to name the people in your family you should gift your estate to (even if you do not intend to), and other people you wish to leave something.

If you lose capacity after you have made your will, the will is still valid. You should make your will while you are in good health so that your capacity to make one is not questioned. Whether you are capable of making a will can be questioned:

- if your ability to think clearly is affected by illness (including dementia or Alzheimer's) or pain
- if you are taking drugs
- if you feel pressured to write a will because someone is insisting that you do one. A will must be made without pressure or influence by anyone, including people you might rely on to help you financially, for housing, or for personal needs and health care.

This is not a complete list. But it gives you a sense of the challenges that are often made to the validity of a will. And more than one of those criteria may apply to any situation.

Even if you have some trouble understanding information or lack some decision-making ability, you might still be able to meet the legal standards to make a will. A health problem that affects your thinking matters, but it is not the only thing that matters. For example, someone in the early stages of Alzheimer's who has a bit of trouble with thinking and reasoning might still be capable of making a will.

Whether you are capable of making a will is a legal question, not a medical one. However, if that is your situation you should [get help from a lawyer](#) who does estate planning and who has experience working with people who have some decision-making, reasoning, or memory problems. You might still be able to do a will under the right circumstances and with the information explained in a way that you are able to understand.

If you don't have testamentary capacity, or you are pressured or influenced by anyone else to do one, you should not make a will. If you do make one, someone could challenge your will in court, and your will would probably not be valid. In that case, you would be considered to have died without a will.

**Knowledge:** You must know and approve of the contents of your will. The will may be invalid if you were misled by fraud or simply by accident. It may also be invalid if someone put pressure on you to do your will or put certain clauses in it. This is called undue influence.

**Written:** A will must be in writing, but it does not have to be typed: it can be handwritten or printed. However, video, audio or digital recording, or any other way of communicating your wishes, are not considered to be valid wills.

**Signature:** You must sign your will at the end. You must sign it in front of two adult witnesses who must be present with you at the same time, unless it is [a holograph will](#). If you cannot sign the will, you can ask someone to sign it for you in front of you and you must tell the two witnesses that the will is yours.

When you are signing your will, you should put your initials on each page and number the pages so that pages cannot be replaced or removed from the will.

You should put the date on your will.

**Witnessed and signed by two other people:** Your two witnesses must also sign the will in front of you and in front of each other. Your witnesses should also initial each page. The witnesses must be at least 19 years old. They must not be beneficiaries or be married to someone who is a beneficiary. The witnesses do not need to know what your will says.

You should also arrange for at least one of the witnesses to swear an Affidavit of Execution.

## What is an Affidavit of Execution?

An **affidavit of execution** is a sworn statement that the witness saw you sign your will on a particular date and that you signed in front of both witnesses.

An affidavit of execution can be made any time after you sign your will. It is best to do it right after the will is signed because witnesses might move away or die before you after the will is signed. After your death, your executor can use the affidavit in court to show that the will was properly signed

**J** and witnessed. If there is no affidavit, the executor will have to find one of the witnesses and have the witness swear an affidavit when the executor applies to Probate Court for authority to act on the instructions in your will.

The witness must sign the affidavit of execution in front of [a lawyer](#) or a [notary public](#).

You can see an affidavit of execution on the [Nova Scotia Courts website](#), under [Probate Court forms](#), at [www.courts.ns.ca](http://www.courts.ns.ca). Look for “Affidavit of Execution of Will or Codicil.”

## Can I choose who gets my property?

In most cases, you are free to deal with your property as you wish. However, Nova Scotia laws place some limits on how you may distribute your property in your will. The laws expect you to give your dependents a fair share of your estate. Those laws are the [Testators’ Family Maintenance Act](#) and the [Matrimonial Property Act](#).

### *Testators’ Family Maintenance Act*

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This law tries to make sure that you leave your dependents with money and support whenever possible. Under this law, dependents are your children of any age, including legally adopted children, and surviving married spouse or registered domestic partner.

Common law spouses, divorced spouses, and step-children who have not been legally adopted are not dependents under this law.

If you leave a dependent out of your will, or leave them less than expected, they can go to court to make a claim for support from your estate. The judge thinks about all the circumstances of a case in deciding whether to give support to your dependents. They include:

- whether a dependent deserves help (what is their character and conduct),
- whether there is any other help available to the dependent,
- the dependent’s financial situation,
- any services the dependent provided to you, and
- your reasons for not providing for your dependent in the will. It helps if you put the reasons in writing and sign the document or include the reasons for leaving someone out in your will.

This is not a complete list. The judge may take other factors into account. The application for support must be made within six months after probate or administration of the estate has been granted. A person who wants to apply for support or make a claim to property under this law should talk with a lawyer.

## Matrimonial Property Act

This law recognizes that both spouses contribute to a marriage. The law says that when one spouse dies, the surviving spouse can apply to court for a division of the matrimonial assets, in addition to any other rights of the spouse under the will or on intestacy. The surviving spouse must apply to the Supreme Court. The surviving spouse must apply for division within six months after the court has [granted probate or administration](#) of the estate. Anyone who wants to make an application should first talk with a lawyer.

A judge decides what share of the matrimonial property the surviving spouse should get.

Common-law spouses are not covered by this law unless you have a [registered domestic partnership](#). Then they are included from the date you registered the partnership.

## Family member

The *Testators' Family Maintenance Act* and *Matrimonial Property Act* say you are responsible to provide for your family and dependents, but otherwise you are generally free to deal with your property as you wish. You may decide to leave your estate to someone other than your closest relatives. You may decide to leave it to some family members but not to others. If you want to do these things, you should get advice from a lawyer and record your reasons in writing.

# Who looks after my will when I die?

Your executor looks after your will when you die. An executor is the person or corporation you name to carry out the terms of your will. Your executor must make sure they know what all of your assets and debts are, pay your debts out of your assets, and then distribute what is left in your estate based on your instructions in your will. Your executor must follow the instructions in your will as closely as possible. However, they will not be able to follow instructions that are illegal, impossible, or would harm someone. Some types of court orders and contracts may also affect whether your instructions can be followed.

The executor's job includes:

- paying off your debts with money from your estate,
- giving your assets to your beneficiaries according to your wishes as set out in your will.

Your executor may also have to do paperwork for the Nova Scotia court that deals with estates, called [Probate Court](#).

# WILLS

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**J** An executor is also sometimes called a trustee. This is because they have legal title to your assets after you die, while they are managing your estate, until they distribute everything to the beneficiaries you name in your will. The executor must also [file your final tax returns](#), and the *Income Tax Act* calls your executor a trustee. And, if you leave property to anyone who can't manage their own finances (like minor children), the executor may manage the property for that beneficiary as trustee for them too.

If you do not name someone to be an executor in your will or if you die without a will, your next of kin will usually ask the Probate Court to appoint someone to fill the executor's role. This person is called an administrator, and Nova Scotia's Probate Act says who can apply to do that job.

The court uses the term personal representative for people who are appointed as an executor or an administrator.

It is best to name an executor in your will. It is also wise to name at least one back-up executor. That way, you can be sure that someone you know and trust will handle your estate. Also, you can give your executor broader power to make decisions and to act for you than the Probate Court will give to an administrator.



## Who should I choose as an executor?

Your executor:

- must be 19 years of age or older
- must be mentally competent
- should live in Canada to avoid tax issues, and ideally in Nova Scotia.

Most people ask a family member or a close friend to act as their executor. You need to be sure that the person you choose has the time and the ability to carry out the many duties of an executor. The executor should be someone who will get things done. Looking after an estate can be difficult and it takes time. Sometimes it includes responsibilities that last for years.

Being an executor can be a big job, so choose someone who is organized and who knows when they need to seek professional advice.

Here are some things to keep in mind:

- The best executor is a trustworthy, reliable, and competent adult.
- Think about choosing someone who is likely to outlive you.
- Choose someone who lives in your province to cut down on expenses.
- Your executor should live in Canada to avoid tax issues.
- Your spouse, a friend, family member, or heir may be able to do a good job as executor. Many people choose their spouse or main heir as executor.
- Your executor can also be a beneficiary.
- Think about choosing someone who knows about banking and business affairs.
- You should name a back-up executor in case your first choice dies, moves away, or for some reason cannot do the job.

If you do not have someone suitable to be your executor, you may be able to name a trust company, a professional advisor (lawyer, accountant, sometimes an investment advisor), or the [Nova Scotia Public Trustee](#). You should talk with them first; they do not have to accept this role and some professional advisors cannot or simply won't. You must check first with the [Office of the Public Trustee](#) if you want them to act as your executor.

Any executor you name may charge your estate to do the work.

### Can I choose a trust company to act as my executor?

Your estate may be complicated. You might not have a relative or friend who is able to act as executor. What else can you do? You may want to name a trust company as your executor. You should check that the company is willing to act as executor or co-executor. If you do not check, the company may not act as executor when you die. The pros of using a trust company as executor are:

- They may be able to help you plan to save taxes and avoid problems.
- They are strictly regulated, so you can be sure they will handle your estate properly and legally.
- They would be a neutral executor if you think your heirs will disagree about your will.
- The company may give you free advice on drafting your will and may store it for you.

The cons of using a trust company are:

- They may charge up to 5 per cent in fees (although any executor may charge your estate to do the work.)
- They can be conservative investors.

- They may not know your assets as well as a family member or friend.
- They may not know your dependents as well as a family member or friend.
- They may not be as flexible with your dependents as a private person could be.
- The taxes for their fees are paid from the estate.

Before you choose an executor, think about the time involved in administering your estate.

For example, if you want to set up a trust for the care, education, and benefit of your children or grandchildren, this would be a long-term commitment for an executor. In a case like this, you may want to consider a trust company rather than someone who might not be able to make such a commitment or who might die before the funds in the trust have all been distributed.

## Can the person I choose as executor refuse the position?

Yes. A person named in your will as executor can refuse to act as executor. This is called renouncing.

Talk with the person you want to be your executor before you name them in your will. Ask if they are willing to do this for you. Just because an executor is named in your will does not mean that they are required to act on your behalf.

As well as asking someone to be your executor, you should ask another person to be a back-up executor in case your executor cannot or will not act, due to death, moving away, or for some other reason.

If the executor you named in your will refuses or is unable to act, and you have not named a back-up executor, your next of kin will have to apply to the court to appoint someone else. This causes delays and could cost money.

## Can I appoint joint executors?

Yes. You can appoint more than one executor (called co-executors) to share the responsibility. Co-executors must make decisions together. Each co-executor has the authority to sign documents for your estate unless your will says something different. One possible problem is that they may disagree about what to do. Since either can sign documents, this could cause problems for your estate.

Before naming co-executors to act together, consider whether your executors will work well together, and whether they will both be in the same geographic area when they must deal with your estate. Co-executors must make decisions together. They must agree on all decisions.

It is a good idea to [talk with a lawyer](#) if you want to appoint two or more executors to act together.

## What does the executor do after I die?

The executor's job is to gather all your assets, pay your debts and taxes, and distribute your money and property according to your instructions in your will. The executor may have to apply to the [Probate Court](#) for authority to deal with your estate. This authority is called a grant of probate. It gives the executor power to handle your estate according to the terms of your will.

## What is a holograph will?

A holograph will is a wholly handwritten will signed by the testator (the person who made the will), but not witnessed.

Before August 19, 2008 holograph wills were not valid in Nova Scotia. Then the law was changed, and a holograph will made after August 19, 2008 is now legal. The courts have ruled that a holograph will made before August 19, 2008 is not valid.

If you have a holograph will, you should check with a lawyer to make sure it is valid.

## What happens if my intentions are unclear in my will?

If your will is unclear when you die, your family may have to go to court to sort out your estate. Your executor will have to talk to a lawyer.

## Should I put my burial wishes in my will?

Burial instructions are not legally binding. They are considered an expression of your wishes.

Your executor might not read your will until after your funeral and burial, so they might not see your instructions before the funeral and burial happen.

If you are going to put your burial wishes in writing, it is better to do that in a separate document and tell the people who need to know where to find it.

Speak with your executor and family members to make sure they know what you want. Your executor is legally responsible to make your funeral arrangements, so this discussion is especially important if your executor is not a family member or there are different expectations among family members about how best to honour you. *Read the chapter on Planning Your Funeral for more information.*

# Things to do after you make your will

**J** Keep your will and the affidavit of execution where they will not be damaged by things like pets, mold, a fire, or flooding. A safe place to store your will is a fire-proof metal box like a filing cabinet or cash box. If you hired a lawyer to write your will, you can ask them to keep a copy as well.

Tell your executor exactly where your will is. Only an original will is valid in Nova Scotia and in most other places, so it is very important for your executor to have the original will when you die.

Keep an up-to-date, detailed record of your assets (including accounts, insurance policies, investments) and debts with your will or where your executor can find it easily.

Keep an up-to-date, detailed list with the contact information for all the beneficiaries you have named in your will, especially if the primary or back-up executor you name does not know everyone personally.

Look at your will every few years or any time you have a major event in your life, like a marriage, new common law relationship, separation, divorce, the birth of a child, a move outside Nova Scotia, or the death of a beneficiary.

You should also regularly review any property you own jointly with someone else, and assets with a named beneficiary, such as pension plans, life insurance, RRSPs, RRIFs, TFSA, to make sure they still do what you want them to.

If you decide that you want to change your will, you can cancel (revoke) it by destroying it or by making a new will. If you make a new will, destroy the old one so there is no confusion about which version should be used. See 'Cancelling your will' below for more information.

Wherever you decide to keep your will, you should tell the people in your life who need to know about it where to get it when it is needed.



## Can I change my will?

You can change your will at any time up until you die as long as you are mentally competent and are not being influenced or pressured by anyone else to make those changes. You should look at your will from time to time to make sure it is still what you want. For example, you may no longer own property mentioned in your will. You may want to make changes because of births, adoptions, deaths, marriages, new common law relationships, separations or divorces in the family.

There are two usual ways to change your will:

- **The best way is to make a new will.** The first clause of a new will usually say that it revokes (cancels) any previous wills. The most recent will, as long as it is properly signed and witnessed, is the one that will be used following your death.
- You can write a separate document called a **codicil** to change part of your will. A codicil must name the will being changed, including a reference to the date the will was signed. It must clearly say which clauses of the will are being removed or changed and clearly set out the new terms of the will. The codicil should also say that apart from the changes it makes, you confirm the terms of the original will. You must sign the codicil and have your signature witnessed in the same way as your will. **But codicils should be avoided.** A codicil is generally used only to make very minor changes to a will. Make a new will if you wish to make major changes to your will or if you already have one codicil. Codicils are frequently lost and frequently written improperly. They are a hold-over from a time before computers, when wills were handwritten or typed, and it was faster to write a codicil.

Never change your will by marking or crossing out words in the will. Instead, make a new will.

You must be mentally competent at the time you make changes to your will. You must also not be influenced or pressured by anyone else to make the changes. If it is found that you were not competent or were influenced to make the changes, your new will or codicil may be successfully challenged in court.

# cancelling your will

J

There are five ways to cancel your will, or parts of your will. This is called revoking a will.

- If you get married, your will is cancelled unless it says it is made as you prepare to marry that person and that you want it to stay valid after the marriage. This is called being made “in contemplation” of marriage.
- If you get divorced, parts of your will are no longer valid. In Nova Scotia, divorce revokes the parts of a will that give a gift to a former spouse, provide a benefit to a former spouse, or appoint the former spouse as executor. There are exceptions: the will, a separation agreement, or marriage contract may say that these parts of your will are not affected by a divorce.
- You make a written document saying that you want to cancel the will. You must sign it and have it witnessed in the same way as a will. For example, in one case a bank manager had a person’s will. The person became ill and signed a letter to the bank manager that said: “*Please destroy the will I have already made out.*” The person had signed the letter in front of witnesses, and the letter cancelled the will.
- You make a new will. A codicil cancels clauses in a will.
- You destroy the will or ask another person to destroy it in your presence. If your will is accidentally destroyed (for example, by a fire in which you die) a copy of the will can be used if there was no intention to cancel your will. However, a judge would need to give consent for the copy to be used, as the legal starting point (presumption) is that only an original will may be used in Nova Scotia for probate and estate administration.

## Is a will made outside Nova Scotia valid in Nova Scotia?

Your will may be valid if it was made outside Nova Scotia. You should have it checked by a lawyer to see that it meets the requirements of Nova Scotia law.

# Where can I get information on probate?

The [Probate Courts in Nova Scotia](#) make information available to the public. You may get copies of [the forms](#) by contacting your local Probate Court office or by going to the Courts of Nova Scotia website, [www.courts.ns.ca](http://www.courts.ns.ca).

The information available from the Probate Court includes:

- [The Probate Act - Questions and answers](#)
- [Dealing with an estate](#)
- [Grant of probate checklist](#)
- [Grant of administration with will annexed - checklist](#)
- [Grant of administration - checklist](#)
- [Passing the accounts of an estate in Probate Court - checklist](#)
  - [How to prepare the final account of the personal representative](#)

Where can I get more information?

- Legal Information Society of Nova Scotia (LISNS)  
Legal Information Line  
902-455-3135  
1-800-665-9779  
Email: [questions@legalinfo.org](mailto:questions@legalinfo.org)  
[www.legalinfo.org](http://www.legalinfo.org)

## Finding a lawyer who does wills

It is a good idea to speak with a lawyer who focuses on estate planning, including wills, and if possible, a lawyer who has a Trust and Estate Practitioner or “TEP” designation. The Legal Information Society of Nova Scotia’s Lawyer Referral Service may be able to refer you to a lawyer who does wills. Or, go to the Legal Information Society’s website at [www.legalinfo.org](http://www.legalinfo.org) for information about ways to find a lawyer in private practice who does wills and estates work.

# What Do The Words Mean?





**This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation. We thank the Law Foundation of Nova Scotia, the Department of Justice Canada, and the Nova Scotia Department of Justice for providing core funding for our services, which makes publications like this possible.**



# Definitions

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## WHAT DO THE WORDS MEAN?

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K

a

- abuse:** any act or neglect to act which threatens the health, security, or well-being of a person. Abuse of older adults is sometimes also called senior abuse or elder abuse. Abuse can be acts, words, or neglect.
- access:** a privilege which refers to the child's legal right to visit or spend time with a parent or guardian. *See parenting time. The term is no longer used in family law.*
- access order:** a court order that provides for contact between a dependent and the person applying for contact, such as visits, phone calls, emails, mail. The term access is no longer used in family law.
- account:** the act of proving what one has done to meet one's responsibilities. For example, an attorney must account for steps they take on behalf of the donor of a power of attorney.
- administrator:** When a person dies without a will, there is no executor to see that everything is handled properly. Or sometimes a will does not name an executor, or none of the executors named in a will are able to act. In these cases, someone needs to fill the executor's role and see that everything is handled properly. This person is called an administrator. The court uses the general term 'personal representative' for a person appointed as an administrator.
- adult:** in Nova Scotia, the age of adulthood is 19. It is also called the age of majority.
- Adult Capacity and Decision-making Act:** the Nova Scotia law that allows a judge to appoint a representative for an adult who cannot make some or all of their own decisions.
- affidavit:** a legal statement that is sworn or affirmed before a Commissioner of Oaths or a notary public.
- affidavit of execution:** a statement sworn by a witness about the signing of a document. For example: witnesses to a will or power of attorney.
- assessor:** a doctor or psychologist has the power to assess an adult's capacity under the *Adult Capacity and Decision-making Act*. With training, an occupational therapist, nurse, social worker, or other qualified health care professional can assess capacity.
- asset:** A legal term for property. This can mean anything of value, such as a house, vehicle, or bank account.
- assisted suicide:** the act of intentionally killing oneself with the help of another person.
- attorney:** the person who receives the authority to act on another's behalf under power of attorney. This person is not necessarily a lawyer.

### b

**beneficiary:** a person who is entitled to receive property through a will as an inheritance. The plural is beneficiaries. Also called an heir.

**bond:** a type of insurance policy.

### c

**capacity:** to be competent to perform a specific task, such as writing one's own will. *Also see testamentary capacity.* In decision-making, capacity means generally that you can understand the information needed to make a decision, and what could happen because of a decision.

**capacity assessment:** testing by a health care professional (assessor) to find out if an adult has the ability to make important decisions on their own.

**capacity assessment report:** a report by a health care professional (assessor) to explain whether an adult can make important decisions on their own. The report may also include information from other sources, like family and friends.

**clause:** section of a legal document, for example, of a will.

**codicil:** a legal document written to change part of an existing will. It is always better to do a new will instead of a codicil.

**cohabitation agreement:** a written agreement between a couple who are living or plan to live together which sets out their rights and responsibilities to one another.

**commissioner of oaths:** an officer who has the authority to administer oaths on legal documents.

**common law partner:** a person in an unregistered live-in 'marriage-like' relationship with another person. *See common law relationship.*

**common law relationship:** an unregistered, live-in 'marriage-like' relationship between two people. They are not married but they share a home, refer to themselves in public as spouses or partners, and share things like bills and other finances. *See registered domestic partnership.*

**competent:** a legal term which means to be of sound mind and able to make reasonable decisions. *Also see incompetent person.*

**conciliation:** a process in family court for negotiating an agreement between two parties with assistance from a conciliator talking to the parties separately.

## WHAT DO THE WORDS MEAN?

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### K

**consent:** Before engaging in sexual activity with someone, the law requires that you take reasonable steps to be sure the other person agrees freely and voluntarily.

**consent order:** the name of the agreement reached between two parties when the issue is resolved using mediation or conciliation.

**consumer fraud:** the intentional deception of a person who buys something.

**contact:** the time a child spends with someone other than their parent or guardian because of a court order or agreement. This can be a grandparent, or anyone else who is close to the child.

**custodian:** a person who has legal care and control of property that belongs to someone else, and to keep it safe.

**custody:** having the responsibility to care for the child, and to make the major decisions about the child's health, well-being, and upbringing. Custody can also mean who the child lives with. The term custody is no longer used in family law. *See decision-making responsibility, contact, interaction, parenting time.*

**cyberbullying:** when someone uses electronic communication, like email, text messaging, or social media, to harm your health or well-being.

### d

**decision-making responsibility:** a general term describing who is responsible to make significant decisions for and about a child. For example, this includes decisions about a child's health, education, culture, language, religion, spirituality, and significant extracurricular activities. This has traditionally been called 'custody'. The term 'custody' is no longer used. *See also parenting time, contact, interaction.*

**delegate:** the person legally authorized to make decisions for another person, specifically under a personal directive for health and other personal care decisions. Also informally called a proxy.

**dependent:** a person another person has a legal obligation to support, such as a spouse or a child.

**domestic partnership:** *see registered domestic partnership.*

**donor:** the person giving someone else the authority to act on their behalf, particularly under a power of attorney document.

### e

**elder abuse:** see *senior abuse, abuse*.

**enduring power of attorney:** a legal document which authorizes a person, called an attorney, or company to act on behalf of another person, even if the person loses capacity. One type of power of attorney.

**estate:** all of the property owned by a deceased person when they die. It includes land, vehicles, investments, cash, jewellery, and furniture. A person's estate is often called their 'property'.

**ethanasia:** an act taken by one person to end the life of another to relieve that person's suffering.

**execution:** the formal signing of a legal document.

**executor:** the person named in the will of a person who has died. The executor is responsible for seeing that everything is handled properly. They gather assets of the deceased, pay debts and taxes, and distribute the remaining money and property according to instructions in the will. The court uses the general term 'personal representative' for a person appointed as an executor.

### f

**fraud:** intentional deception. Also called a scam.

**fraudster:** a person who commits a fraud.

**general power of attorney:** a power of attorney that gives your full authority to your attorney.

**guardian:** a person who had applied to the court for guardianship of an adult under the old *Incompetent Persons Act*. Now considered to be a representative under the *Adult Capacity and Decision-making Act*. A guardian made all decisions for an adult under their care; a representative makes only the decisions the adult cannot make. Guardian is also the legal term for someone who has legal responsibility for the personal or financial interests of a minor (person under 19) child.

## WHAT DO THE WORDS MEAN?

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### K

#### h

**health care:** any examination, procedure, service, or treatment that is done for a health-related purpose, including a therapeutic, preventative, palliative, or diagnostic purpose. It includes a course of health care or a care plan.

**holograph will:** a handwritten will signed and written by the testator but not witnessed.

#### i

**identity theft:** the illegal act of using personal information, for example personal identification numbers or Social Insurance Numbers, to steal from a person.

**incompetent person:** anyone who is legally incapable of managing their own affairs because of mental infirmity. This may be because of an accident, disease, or psychiatric illness.

**instruction directive:** a person's expression of wishes for health care measures they want taken for them if they become unable to express their wishes themselves, as laid out in a personal directive.

**interaction:** communicating with a child outside of parenting time or contact time. Includes phone calls, emails, or letters, sending gifts or cards, attending the child's school activities or other activities, receiving copies of report cards or school photos, video chats.

**intestacy:** the state of dying without leaving a will.

**intestate:** to die without a will.

**inventory:** a listing of all of a person's possessions, such as for the purpose of probating a will.

#### j

**joint tenancy:** a type of ownership of property in which each person has equal ownership, such as a house or bank account. The owners have equal right to use and control the property. If one owner wants to sell the property, any other owners must agree. See *tenancy in common*.

### L

**least intrusive:** a representative must not interfere with the privacy and freedom of an adult in need of representation unless absolutely necessary.

**living will:** a form of instruction directive in which a person sets out their wishes for health care measures they do or do not want if they become unable to communicate. In Nova Scotia the term used is a personal healthcare directive or personal directive.

### M

**marriage contract:** a written agreement between two persons who are married to one another. Sets out the details of property ownership, how property will be divided upon separation, and any support obligation between the spouses.

**mediation:** a process for using a neutral third party (the mediator) to help two parties come to an agreement.

**mediator:** a person who helps negotiate agreement between two parties. *See mediation.*

**medical consent:** an agreement to a medical treatment or procedure. It can be a signed document which shows agreement to your own medical treatment or sometimes it can be verbal or implied; for example, when you roll up your sleeve to give a blood sample.

### N

**neglect:** the failure to provide a person to whom you owe responsibility with what they need, for example adequate food, medical attention, shelter, assistance, care, or clothing. A form of abuse.

**notary public:** a person, usually a lawyer, who serves the public in drawing up and certifying legal documents and authenticating documents as valid.

### O

**order:** a document authorized and signed by a judge that is the law between the parties to the order.

**ordinary power of attorney:** *see power of attorney.*

## WHAT DO THE WORDS MEAN?

---

K

p

**parenting time:** the time a child spends with a parent or guardian because of a court order or agreement. A term used in family law. *See also contact.*

**permanent care:** the placement of a child in care which resembles that of wise and conscientious parents.

**personal care decisions:** decisions about what a person will eat or drink, where they will live, what they will wear, what activities they will do, and what support they will need to live. Includes what health care treatment they get, such as tests, procedures, or services to keep them healthy.

**personal directive:** a type of advance health care directive which allows you to give instructions and/or authorize someone else to make decisions about personal care and consent to medical treatment on your behalf. *See also delegate.*

**personal representative:** an executor of a will or administrator or an estate.

**phishing:** a scam used by identity thieves, such as an email which threatens serious consequences if you don't immediately update personal electronic information.

**probate:** a legal process to deal with a person's estate after they die.

**property:** a legal term which indicates all possessions owned by a person, not just real estate.

**power of attorney:** a legal document in which you give another person authority to act on your behalf during your lifetime. Also called ordinary power of attorney. *See also, donor and attorney.*

**proxy:** a person who acts as the decision maker. If a person becomes unable to consent to treatment, a proxy has the authority to make health care decisions for that person. *See also delegate.*

**proxy directive:** the appointment of a person to act as the decision maker, or proxy, as laid out in your advance health care directive, if you become unable to consent to treatment. *See also instructional directive.*

**Public Trustee:** the provincial office which has authority to act for people in certain situations if they are unable to care for their own affairs, for example, mentally incompetent persons.

### r

**registered domestic partnership:** any two people who are living in a common law relationship can register their relationship with the Nova Scotia government (Vital Statistics) as a registered domestic partnership. This gives common law partners many, but not all, of the same rights as married spouses.

**renunciation:** a refusal to act or fulfill a function to which you have been named, such as refusing to act as an executor.

**representative:** a person with legal authority by court order (representation order) to make decisions for another adult under the *Adult Capacity and Decision-making Act*.

**representation order:** a court order that appoints someone to be a representative under the *Adult Capacity and Decision-making Act*.

**representation plan:** a plan to manage the well-being and financial matters of an adult who cannot manage those matters for themselves.

**residue:** any property remaining after funeral expenses, debts, taxes and costs of managing an estate have been paid, and any specific gifts in a will have been paid or given to one or more beneficiaries.

**retainer:** an advance fee paid to a professional who will act for you, such as a lawyer.

**revoke:** a legal term which means to cancel an existing legal document, such as a will.

### s

**scam:** *see fraud*.

**seeking leave of the court:** getting the court's permission to make an application to ask it for something, such as decision-making responsibility.

**senior abuse:** any action which threatens the health, security, or well-being of an older person. Also called elder abuse or abuse of older adults.

**serve:** properly notify a person of a court proceeding. Personal service is where someone hand delivers the court documents directly to that person to notify them of a court proceeding. Personal service cannot be done by mail, courier, fax or registered mail.

**shoulder surf:** a tactic used by identity thieves who watch as you punch your access codes and passwords on ATMs, debit machines, telephones, and computers.

## WHAT DO THE WORDS MEAN?

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### K

**specific power of attorney:** a power of attorney that limits exactly what authority you give to your attorney.

**spouse:** two people who are married to each other.

**springing power of attorney:** a specialized power of attorney document which says what future event will cause it to come or “spring” into effect. Sometimes also called ‘contingent’ power of attorney. *Also see power of attorney.*

**surety:** the person or company which guarantees to pay money or perform acts if a bond fails.

### t

**tenancy in common:** a type of joint ownership of property in which two or more people each own part of a shared asset. Their shares may not have the same value. Each owner can use their share how they like or sell it without permission from any other owner. *See joint tenancy.*

**testamentary capacity:** to be mentally competent to make a will. Also called “being of sound mind.” *Also see testator.*

**testator:** a person who makes their will.

**trust company:** a corporation organized to perform legal duties, such as a trustee in managing estates.

**trustee:** someone who has legal responsibility to manage something, such as property, because of a court order or other legal document.

**trustee in bankruptcy:** court-appointed trustee who administers the affairs of a bankrupt company or person. Also called Licensed Insolvency Trustee.

### u

**undue influence:** a situation in which someone exerts an inappropriate amount of pressure on another person. For example: forcing someone to write a will.

### w

**will:** a legal document in which you say what you want done with your property after death.

# LEGAL INFO

## NOVA SCOTIA

For more information on any of the topics covered in *It's in Your Hands: Legal Information for Seniors and their Families*, and on the law in Nova Scotia generally, go to the Legal Information Society of Nova Scotia (LISNS) website at [www.legalinfo.org](http://www.legalinfo.org).

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