IT’S IN YOUR HANDS

LEGAL INFORMATION FOR SENIORS AND THEIR FAMILIES
Introduction

Everyone has legal questions about the laws that affect our lives. These may change over time as we grow up, move into the workforce, buy our first home, start a family, care for aging parents, plan for retirement and become seniors ourselves.

This booklet was produced as part of the Legal Information Society of Nova Scotia Seniors Legal Planning Project. The objectives of the project are to:

• Increase seniors’ knowledge and understanding about arranging their legal affairs
• Increase the knowledge and understanding of family members, friends, caregivers, and practitioners/service providers working with seniors and their families, about both the legal-financial issues pertinent to seniors and the available resources and supports.

Seniors and service providers helped develop the list of topics included in the booklet by participating in focus groups and surveys.

Of course, many of these topics are not only relevant to seniors. For example, any adult may need to write a will or a power of attorney, or they may be targeted by a scam.

You may read the booklet from cover to cover or you may just want to read the topics that most interest you. As you read through the booklet, you will find legal words which are in bold type. At the end of the booklet there is a glossary which tells you what these words mean.

It is not possible to cover all the legal issues that might interest everyone. You can find information on a variety of other legal issues on the Legal Information Society of Nova Scotia website at: www.legalinfo.org
Table of Contents

Dating and New Relationships .....................A
Scams, Identity Theft and Other Fraud .........B
Planning Your Funeral ..............................C
Grandparents’ Rights ...............................D
Adult Capacity and Decision-making ..........E
Health Care Treatment and Consent ..........F
Powers of Attorney ..................................G
Public Trustee ......................................H
Wills ..................................................I
Abuse of Older Adults .............................J
What do the words mean? .......................K
Acknowledgements
The first edition of this publication was a project of the Legal Information Society of Nova Scotia (LISNS) in partnership with the Nova Scotia Centre on Aging (NSCA), Mount Saint Vincent University, Halifax, with funding from Human Resources and Skills Development Canada’s New Horizons for Seniors Program.

We thank the many individuals, including seniors and practitioners, who have provided feedback, expert input and advice on sections of the guide, for this and previous editions.

We particularly thank the following for reviewing and providing expert feedback on sections of the guide for the fourth edition: Nova Scotia Public Trustee Office; Mary Jane Abram, the Confederacy of Mainland Mi’kmaq; Allyson O’Shea and Adriana Meloni, Nova Scotia Department of Justice; Ilana Luther, Access to Justice and Law Reform Institute of Nova Scotia; Paul Stordy, Nova Scotia Legal Aid; Jeanne Desveaux, Barrister & Solicitor; Barbara Darby, Barrister & Solicitor.

We gratefully acknowledge the Nova Scotia Department of Seniors and the Department of Justice Canada for providing funding for the fourth edition of It’s In Your Hands.

Disclaimer
This publication provides general legal information only and is not intended to replace professional, legal, or other advice.

The Legal Information Society of Nova Scotia disclaims any liability arising from the use or application of any information in this publication. If you feel you have a legal problem, you should talk with a lawyer.

Design and Layout: Pollution Design, Allen Print (4th ed.)
Writing, Editing and Research earlier editions: Lis van Berkel, Brenda Pate, Maria Franks
Writing, Editing and Research 4th edition: Nicole Slaunwhite, Nicole Watkins-Campbell, Wendy Turner


© Legal Information Society of Nova Scotia 2019
Seniors who start dating or new relationships can learn how technology changes dating and how a new relationship can change your finances.
What safety steps should I take if I’m meeting someone for the first time?

While dating and meeting new people is fun, there are people who try to take advantage of these situations. They are called fraudsters, and they want you to give them your money. Until you get to know your new friend better, you can do some things to protect yourself.

• Consider going out with a group of friends.
• Arrange to meet in a public place such as a café.
• 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 reveal too much personal information until you get to know the person better.
• Do not agree to lend money.
• Be wary if the person tries to talk you into investing in a scheme.

What should I know about safety and meeting someone online?

There are thousands of internet chat rooms and dating sites. You can also download dating apps on a tablet or smartphone. Many people meet romantic partners online. But you should know that someone you meet online may not be who they say they are. A fraudster can create a fake online identity to trick someone into providing personal information. This is called “catfishing.”

Here are some things you can do to protect yourself online:

• Find out if the website or app has a privacy policy.
• Do not give out your address, workplace, phone number, or other private information.
• Consider using a seniors-only dating site.
• Ask someone you trust to look at your profile and make sure it does not give away private information.

Many public libraries and community centres give free computer courses to help you learn about using technology and the internet.

Sometimes people are bullied or harassed online, or by text or email. Or they might find that someone they trusted has shared private pictures online. If this happens to you, you can speak with the police, or contact Nova Scotia’s CyberScan Unit. CyberScan oversees Nova Scotia’s Intimate Images and Cyber-protection Act. That law aims to discourage and
address bullying online, or by text or email. CyberScan can help you find a solution to stop the bullying. Contact CyberScan at novascotia.ca/cyberscan/ or call 902-424-6990 or 1-855-702-8324.

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

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. 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. Someone who has had too much to drink may not be able to give 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 getconsent.ca or breakthesilencens.ca.
Are you thinking about sex with a new partner? You may wish to talk about safe sex with your partner, your doctor, or another person you trust, or do some research online. Sexually transmitted infections (STIs) are becoming more common among seniors in Canada, but you can protect yourself. Call 8-1-1 for health information and advice, or go to 811.novascotia.ca. 811 is a confidential health line that provides access to registered nurses 24 hours a day, seven days a week.

Being in a common-law relationship is not the same legally as being married. For instance, as a common-law partner, you will not automatically have a right to half of your partner’s property if you separate or if one of you passes away.

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 split equally. However, in real life, it is not always easy to sort out who paid for what.

If you and your former partner cannot agree on how to split up your property when you separate, you may apply to the court for a court order to divide the property. In every case, former common-law partners should have legal advice involving division of the property they share.

If you die without leaving a will, your common law partner may not receive any of your property. Your property goes to the people considered to be your nearest blood relatives. The Intestate Succession Act lists these people in order. Intestate means “without a will.” Your common-law partner would have to apply to the courts for financial support or to make a claim on the estate. The Intestate Succession Act distribution list does not include your common-law partner. It does include your married spouse, or your partner if you have a registered domestic partnership. For more information on wills, see the section “Wills.”
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.

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

If you and your 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. You may want to include them in 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. You should ask your lawyer about a cohabitation agreement.

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.

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.

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.

What is a registered domestic partnership?

If my partner moves in, who owns the things we buy together? How can I protect my own property after we move in together or get married?

How should I protect myself if my partner and I have a joint bank account?
There are two types of joint accounts.

- **Joint account with tenancy in common**: This is an arrangement where you and your partner each have a share of the money in the account. The shares do not have to be equal. When you separate or divorce, your share is protected and is yours to take with you. If you die, your share is left to the people who will inherit under your will or intestate rules, and your estate will have to pay probate tax on it.

- **Joint tenancy**: This means the account holders have equal right to use and control the money in 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 person automatically owns all the money in the account. This is called right of survivorship.

**Joint tenancy** is the most common type of joint account for couples. If you ask your bank for a joint account, it will assume that you want a joint tenancy account. This can lead to problems when a relationship breaks up if one of the account holders takes all of the money out of the account. So, you should think about what type of account you want.

Account holders do not have to be related, but often they are spouses or partners, or a parent and child.

The Financial Consumer Agency of Canada has more information about Joint Accounts at Canada.ca under “Money and Finances.” Visit Canada.ca/seniors under “Managing Your Money” to read “What every older Canadian should know about: power of attorney (for financial matters and property) and joint bank accounts,” a federal and provincial government publication.

Pension benefits may be regulated provincially or federally. Your pension plan will be governed by federal laws if you work or worked in a federally regulated industry such as banking, interprovincial communications, or interprovincial transportation. Employees of the provincial government, teachers, private sector employees, and federal public-sector employees are covered by separate laws related to their pension plans.

When you die, any benefits payable from a pension plan, locked-in retirement account, or life income fund will be automatically payable to your spouse or common-law partner. If your marriage or common-law relationship ends, your pension funds may still be divided with your
partner. This applies if your marriage or common-law relationship ends while you:

• are a member of a pension plan,
• have a locked-in retirement account or life income fund, or
• are receiving a pension from a pension plan.

The Nova Scotia Pension Benefits Act defines spouses as:

• legally married people
• individuals who have lived together for one year so long as neither is married to someone else
• individuals who have lived together for three years if one of them is married to someone else
• registered domestic partners

If you do not have a spouse when you die, the death benefit will be paid to the person you named as a beneficiary in your pension forms.

You can read more about pension benefits at novascotia.ca under “Finance and Treasury Board.”

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

• your name is on a contract, like a car or apartment lease,
• you co-signed a loan for your partner, or
• 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 dies, their debts must be paid from any assets, like a car or house, they owned when they died. This can 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.
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 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 try to change your will by marking in or crossing out words. This may cause significant problems. It is much safer to make a new will. For more information, see the “Wills” section of this book.

Family law information: www.nsfamilylaw.ca

CyberScan: for information and help if you are being bullied online, or by text or email. Contact CyberScan at 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 canada.ca/en/financial-consumer-agency.html

General legal information

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

The Legal Information Society of Nova Scotia can also refer you to a lawyer or mediator.
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.
If you think that you may be a target of fraud, or if you have already sent funds, don’t be embarrassed—you are not alone. If you want to report a fraud, or if you need more information, contact The Canadian Anti-Fraud Centre (1-888-495-8501 (toll-free) or antifraudcentre-centreantifraude.ca).

**What is fraud?**

Fraud is when someone lies or tricks another person or a company to get money. Sometimes fraud is called a scam or a scheme. It is a crime that affects all age groups, and victims usually lose money. The person who tries to cheat someone out of money is called a cheat, a scammer, a scam artist, a con artist, a fraudster, or a swindler.

Victims are often too embarrassed to tell anyone, and so many frauds do not get reported. This makes it easier to get away with fraud.

**What is consumer fraud?**

Consumer fraud is tricking a person into buying a product or a service or into giving away valuable information. For example, you are tricked into paying money for something that does not exist, is not accurately described, or is of little or no value. Another example is being tricked into giving someone information that lets them steal from you.

**How does consumer fraud happen?**

Fraudsters approach their victims in many different ways. They might

- come to your door
- call you on the telephone
- send mail through the postal system
- send emails or use social media or other online services
- meet you in a coffee shop, club, church, or other place.

The scammer may attract you with a TV commercial, a magazine article, a newspaper advertisement, a website, a survey, or through social media. They can get money from you without contacting you in person. 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. As well, it is hard to guess what the next new scam will be. Some common consumer fraud scams are listed below.
Identity theft: Someone gets your personal and financial information to steal from you. This is the top fraud across North America. For example, someone looks through your trash bin and takes documents that have your private financial information.

Advance fee fraud: Someone asks you to pay for or to give your personal or financial information before you receive a product or service.

ATM, credit card, and debit card fraud: Someone uses your pass codes and card numbers to withdraw cash from your accounts or to pay for purchases with your credit.

Counterfeiting: Someone pays for purchases with fake money, cheques, or money orders.

Door-to-door frauds: Someone comes to your door and makes an amazing offer that they say your neighbour is taking, but that you don’t have time to check out. Always check with the Better Business Bureau or with the neighbour.

False charities: Someone pretends to collect donations for a charity or for a recent disaster. The charity might have a similar name to a real 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, or they might pretend to represent a government and say you haven’t paid your taxes.

Investment fraud: Someone misleads you into giving money for business ventures that promise unrealistic profits.

Misleading job opportunities: Someone promises a large income for easy work, if you pay a fee or a start-up investment. Or someone guarantees you will get a job after an expensive course.

Online auctions, lotteries, and contests: Someone tricks you into buying items of little or no value, or into buying tickets or prizes that do not exist or have little value.
If it sounds too good to be true, it usually is. Here are some things that might point to a scam:

- contact from a stranger who wants to offer you a deal
- contact from people or businesses that you do not know
- an over-excited caller who uses a lot of pressure
- a person who pushes you to say yes right away to a deal
- a person who tells you not to tell anyone else about the deal
- a person who discourages you from getting any advice or encourages you to get advice only from a person they suggest
- any deal where what you earn will be based on how many people you involve in the deal
- a person who will not send you any information until you give them money or information
- any deal where you have to pay a fee or buy something before you receive a prize, credit, or product that you did not order
- a price that is too low compared to the true value
- the promise of a reward, prize, or payment (usually very large) in exchange for your banking information
- a person who says they represent a charity you do not know or that has a name very close to a charity that is well known
- a person who calls 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
- a person who says they are calling from your bank and to ask you for information about your account to help them catch a fraudster

Identity theft is getting your personal information and using it to steal from you. Identity theft is now the fastest-growing fraud.

Personal information includes your:

- address
- date of birth
- social insurance number (SIN)
- credit card or bank card numbers
- personal identification numbers (PINs)
- pass codes
- driver's license number.
If identity thieves get your personal information, they may use it to:
• take money out of your bank accounts
• apply for new credit cards or loans in your name
• buy expensive items on credit in your name or using your credit card

Sometimes, identity thieves might 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 need money right away. Sometimes they pretend to be you and arrange to mortgage or sell your house.

Identity thieves have many ways to get your personal information. They might:
• 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 who has the authority to ask for personal 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—watch over your shoulder 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 they need your personal information 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.
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 pass codes, and look around you to make sure that no one is looking over your shoulder.

- Before you buy online or on the phone, make sure the person is who they claim to be:
  - Check businesses with the Better Business Bureau.
  - Check charities with Canada Revenue Agency.
  - Check businesses or non-profits in Nova Scotia with the Registry of Joint Stock Companies.

- For any repair work:
  - Get at least two written quotes.
  - Don't pay all the money up front.
  - Ask for references and check them.
  - Check at the Better Business Bureau for complaints about the company.

- Remember that police and financial companies, like banks and credit card companies, never call or email you to ask for your bank card or credit card details.

- Do not give more personal information than is necessary for your business.

- Your social insurance number (SIN) is private. Give it only when you must, and do not carry your SIN card with you. Businesses such as stores should not ask for your SIN.

- Do not give your address and phone number unless there is a good reason.

- Carry only the documents and cards you need.

- Always keep your purse or wallet in sight—never leave it.

- If you are paying by debit or credit card, make sure that your card number is not listed on the receipt.

- If you are paying with a debit or credit card in a restaurant, keep your card in sight. Pay at your table or go with the server to pay.

- 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 get renewal documents and cards, destroy the old ones and sign the new ones right away.

• Know when your credit card, banking statements, and bills should arrive in the mail.

• Keep credit card, debit card, and ATM transaction records so you can match them to your statements.

• Read your bank and credit card statements to look for withdrawals or charges that you were not expecting.

• Update your credit cards to ones that have the latest security features, like microchips.

• Let your credit card company know when you are leaving the country. Your credit card company should call you if there is unusual activity on your card such as a charge for a hotel outside your country.

• Lock your mailbox.

• Pick up your mail right away each day.

• Do not use pass numbers (for your credit card, bank account, etc.) with your personal information (like your birth date or SIN).

• Do not use passwords that someone could guess, like your pet’s name.

• 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 stops most businesses from contacting you by phone without your permission. It won’t stop businesses you choose to deal with.
If you think that you are the target of fraud, do not deal directly with the person you think is trying to trick you. Do not agree to give any more money to get your first payments back or to keep a deal open.

Call your local police or RCMP detachment. Call the Canadian Anti-Fraud Centre toll-free at 1-888-495-8501. You can also report a fraud at their website (antifraudcentre-centreantifraude.ca) or some of the websites listed at the end of this section under “More Information.”

Contact Equifax Canada (toll-free at 1-800-465-7166 or online at equifax.ca) and TransUnion Canada (toll-free at 1-800-663-9980 or online at transunion.ca). 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 anyone has opened any new accounts or debts in your name.

The Financial Consumer Agency of Canada (canada.ca/en/financial-consumer-agency.html) has information about credit reports and credit reporting agencies, and how to contact them and correct errors on your credit report.

If you have been the victim of fraud, you must call your banks or credit unions and the credit card companies where you have your accounts. Tell them what happened and ask them to freeze your accounts. If the fraud has affected your account, they will close it. You will need to open new accounts.

Call your local police or RCMP to report the fraud, no matter how small your loss may be. They may start an investigation.

Call the Canadian Anti-Fraud Centre toll-free at 1-888-495-8501. You can also report a fraud at their website (antifraudcentre-centreantifraude.ca) or some of the websites listed at the end of this section under “More Information.”

Contact Equifax Canada (toll-free at 1-800-465-7166 or online at equifax.ca) and TransUnion Canada (toll-free at 1-800-663-9980 or online at transunion.ca).

The Financial Consumer Agency of Canada (canada.ca/en/financial-consumer-agency.html) has information about credit reports, credit
SCAMS, IDENTITY THEFT AND OTHER FRAUD

reporting agencies, and how to contact them and correct errors on your credit report.

If your government documents, like your driver’s licence or your social insurance card—were lost or stolen, contact the department. Tell them what has happened and ask for new documents. You will likely need to do that in writing.

Call Service Canada at 1-800-206-7218 if your social insurance number (SIN) has been stolen.

If you think your mail is being stolen or redirected, call Canada Post at 1-800-267-1177 or visit canadapost.ca to report it online.

Quick tips

• Know the source. This means look into a website before you give any personal information—especially financial information. You can still shop or surf at unknown sites, but make sure you know who you are dealing with before you give any information.

• Read your email carefully. Many fraudulent offers come in the form of emails because the internet makes it possible to send thousands at a relatively low cost. Use an email program that lets you screen out these mass mailings, and you’ll spend less time with your finger on the delete key.

• Deal only with organizations with a good reputation, and don’t give personal or financial information unless you are sure you are in a secure environment. Don’t judge reliability by how nice or sophisticated the website seems.

• Be careful at auction sites; they cause many complaints.

• Understand as much as you can about how the auction works; know what is expected of you as a buyer, and what the seller must do.

• Find out what the website or company does when there is a problem. Think about insuring the transaction and the shipment.

• Learn as much as you can about the seller, especially if you have only an email address. If it is a business, check the Better Business Bureau where it is located. Read the feedback on the seller. Laws are different in different countries: it may be much harder to solve a problem if the seller is outside Canada.

• Find out if shipping and delivery are part of the auction price or if they are extra costs. If they are extra, find out exactly how much they will cost.

• Do not give out your social insurance number or driver’s license number.
• Do not give out your credit card number online unless the site is secure and reputable. Sometimes you can see a tiny padlock on the screen. This shows you that the site has a higher level of security. It is not a guarantee, but it may give you with some protection.

• Do not invest in anything you are not absolutely sure about. Do your homework on the investment to ensure that it is real.

• Stay away from people who say they are Nigerian or foreign government officials if they are asking you to help them put money in overseas bank accounts.

Where can I get more information?


• The Canadian Anti-Fraud Centre online at 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, and identity theft complaints

• The Financial Consumer Agency of Canada: 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 ic.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.

• CyberScan: for information and help if someone is bullying you, or pretending to be you online, or by text or email. Contact CyberScan at 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: consumerinformation.ca.

• 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. Their Little Black Book of Scams
(competitionbureau.gc.ca under “Publications”) 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: Innnt-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.

- **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 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

- **To get a current copy of your credit report, contact Equifax Canada**—equifax.ca or 1 800-465-7166 or TransUnion Canada—transunion.ca or 1 800-663-9980

- **Nova Scotia Department of Seniors**:
  - Email: seniors@novascotia.ca
  - Information line: 1-844-277-0770 (toll-free in Nova Scotia)
  - Website: 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.

**General legal information**
Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902-455-3135
1-800-665-9779 (toll-free)
legalinfo.org
Email: questions@legalinfo.org

The Legal Information Society of Nova Scotia can also refer you to a lawyer or mediator.
Planning your own funeral before you are near the end of your life lets you decide what kind of funeral you want and how much you want to spend.
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. Usually your family or friends would do this. Tell them about the 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. Often, the will is not read until after the funeral.

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.

In Nova Scotia, a funeral home is the best place to go for help in planning your funeral. Some funeral homes will 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.

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.

The Canada Pension Plan 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 you apply for this benefit. For more information, call 1-800-277-9914 or visit [canada.ca/en/services/benefits/publicpensions/cpp/cpp-death-benefit.html](http://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 [novascotia.ca/coms](http://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 lastpostfund.ca.

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.

In Nova Scotia, you can choose between two 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.

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.

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.

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 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.

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. For information about what organ and tissue donation is and how it works go to www.nshealth.ca/legacy-life.
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. These 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.

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

Service Nova Scotia has online information about pre-arranged funeral plans, and a Pre-Arranged Funeral Plans brochure.

You can read the Nova Scotia Cemetery and Funeral Services Act online by going to the Nova Scotia Legislature website at [nslegislature.ca](http://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. For example, Halifax Regional Municipality’s bylaw C-700 can be read online at: [www.halifax.ca/legislation/bylaws/hrm/documents/By-LawC-700.pdf](http://www.halifax.ca/legislation/bylaws/hrm/documents/By-LawC-700.pdf)

To find out about bylaws in other areas of Nova Scotia, contact your town or municipality 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
4. Mi’kmaw Wills and Estates and Matrimonial Real Property.
Go to cmmns.com/program/wills-estates/ for more information.

Public libraries have many books that can help you make decisions about planning your own funeral. A good book that includes checklists is:

**Big Death: Funeral Planning in the Age of Corporate Deathcare**
Author: Doug Smith

A book that looks at North American attitudes about death and gives information about how the funeral industry works is:

**Smoke Gets in Your Eyes: And Other Lessons from the Crematory**
Author: Caitlin Doughty

**General legal information**

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

The Legal Information Society of Nova Scotia can also refer you to a lawyer or mediator.
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 information about your rights as a grandparent.
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.

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

**What are the terms used to describe parenting and spending time with a child?**

**Custody** means 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. Usually the child lives with the person who makes the major decisions about their care and upbringing. This term is only used in the Parenting and Support Act (NS).

**Decision-making responsibility** describes 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 extra-curricular activities. This has traditionally been called ‘custody’. The federal Divorce Act no longer uses the word custody.

**Parenting time** is the 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** is 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. It is a term used in both the Parenting and Support Act (NS) and Divorce Act (federal). Contact may sometimes also be called access although the term ‘access’ is no longer used in the legislation.

**Interaction** means communicating with a child outside of parenting time or contact time. 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 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.
**GRANDPARENTS’ RIGHTS**

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

No. Any woman who gives birth is the parent of the child, regardless of her age.

If your child in under the age of 19 and still lives at home, you have a 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 order in place.

If you want to have a formal agreement or court order in place to confirm your decision making authority (custody) regarding your grandchild, you may apply to court. To make an application to court you would 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.

**Can I apply to court for custody of my grandchild or to spend time with them?**

If you wish to apply to have the decision making responsibility (custody) for your grandchild, or parenting time, you must ask for the court’s **leave**. Leave is permission from the court to apply. When you ask for leave, you must explain to the court why you are asking to have decision-making responsibility of your grandchild, and what role you play or have played in your grandchild’s life. You can apply to court under the Parenting and Support Act for contact time or interaction with your grandchild without asking for the court’s leave.

A judge will always do what they feel is in the child’s best interests, or what is best for the child. This is not always what you feel is best. A judge will let you have contact time or interaction with your grandchild if they think it is best for the child. Even if the court gives you leave to apply for custody of your grandchild, it might not give you custody.

It is a good idea to talk to a lawyer if you are considering going to court. It is also important to look at other options first to resolve the dispute, such as mediation or negotiation.

**How does the court decide what is in a child’s best interests?**

To decide what is in the 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
What are some ways to reach an agreement without court?

- 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

In cases about contact time 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)

**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), or through the Legal Information Society of Nova Scotia’s Mediator Referral Service. 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.
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.

You can start an application for decision-making responsibility (custody), 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 at their website, nslegalaid.ca, or call your nearest Legal Aid office. It 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/custody-access/information-grandparents for information about where to start. You can find an online guide to making a court application at nsfamilylaw.ca/guide-making-application-court. You can also make an appointment to see the Summary Advice Lawyer. The Summary Advice Lawyer provides free, brief legal advice to anyone who has a family law issue but does not have a lawyer. There are no income criteria. Call the family court for contact information, or go online to nsfamilylaw.ca under “Getting legal advice and finding a lawyer.”

**Intake** is a session at family law courts you must go to. 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 gone to an intake session, you may attend **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.
Where do I apply for custody or contact time?

Generally you must apply to the family law court closest to where the child lives.

Is financial support available for grandparents with custody or care of a child?

Anyone, including a grandparent, who has decision-making responsibility (custody) of a child can apply to court 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 or by calling 1-800-387-1193.

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

If the person with care of your grandchild prevents your court-ordered contact time 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.

Can I apply to change a court order?

You can apply 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 time 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 Department of Community Services. Contact the department using these toll-free numbers:

- Weekdays, 8:30 a.m.–4:30 p.m.: 1-877-424-1177
- Weekends or holidays: 1-866-922-2434
If a child is abused or neglected, the Department of Community Services will try to keep them in their home and to offer services to the parents and child. However, this is only as long as the child is safe. If a child is in serious danger, the department may remove them from their home and take them 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. Care can be temporary or permanent. 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 Children and Family Services Act says that the child must be placed with a relative if possible. A judge may decide not to place a child with relatives if that is not in the child’s best interests. If a child is not placed with relatives, the child can still visit family, relatives, and friends unless the court says that this may be harmful to the child.

A child in care may be adopted if the court agrees that is in their best interests. A grandparent who wants to adopt their grandchild must ask the court for leave to apply. 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.
GRANDPARENTS’ RIGHTS

Where can I find more information about grandparents’ rights?

**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](http://nslegalaid.ca).

**A lawyer in private practice who does family law.** You can go online to [legalinfo.org](http://legalinfo.org), under Lawyers and Legal Help, for ways to find a lawyer.

**Family Law Nova Scotia.** The website at [nsfamilylaw.ca](http://nsfamilylaw.ca) offers information for grandparents under “Custody and Access.”

**Legal Information Society of Nova Scotia (LISNS).** Legal information line: 902-455-3135 or 1-800-665-9779 (toll-free); online at [legalinfo.org](http://legalinfo.org); Email: [questions@legalinfo.org](mailto:questions@legalinfo.org). The Legal Information Society of Nova Scotia can also refer you to a lawyer or mediator.

**NS Child Welfare Services**
Online: [novascotia.ca/coms/department/contact/ChildWelfareServices.html](http://novascotia.ca/coms/department/contact/ChildWelfareServices.html).

You can also find information about grandparents’ rights advocacy and support groups online.
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.
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 a family member or other caring person can apply to court to ask to be the adult’s representative decision-maker or representative.

A representative may have legal responsibilities and duties related to part or all of the adult’s finances or personal or health care. 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 their own important 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.

You can get more information about the Adult Capacity and Decision-making Act, and about being a representative decision-maker for an adult at novascotia.ca/just/pto/adult-capacity-decision.asp.

Representation allows someone to be responsible for the personal and financial interests of an adult who is not able to make their own decisions. If an adult cannot make significant health or personal care or financial decisions on their own, 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, 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* has been replaced by the *Adult Capacity and Decision-making Act*, which took effect on December 28, 2017. The new law 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*.

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 unless absolutely necessary.

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 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
ADULT CAPACITY AND DECISION-MAKING

- 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.

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 time 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, and must make decisions in the least restrictive and least intrusive way.

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.
Who needs a representative?

An adult may need a **representative** if they do not have the capacity to make their own decisions. 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

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

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 not have made, does not mean they do not have capacity to make their own decisions.

A person can have different capacity at different times.

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.
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 wishes of the adult
- 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 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

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 you 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.
ADULT CAPACITY AND DECISION-MAKING

- things that might make it harder for a judge to oversee a representation order, such as if a proposed representative lives outside Nova Scotia
- 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/.

Can the court appoint more than one representative?

A court can appoint more than one representative to act together (jointly) or separately. If two or more representatives are appointed to act together, the representation order must include a way to end any disputes that might come up between the representatives when carrying out their duties.

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/ 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 with a lawyer, even for a short time.

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 under Documents for Court, then Nova Scotia Civil Procedure Rules. You will find court contact information at 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/ 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 brief (a letter to the court explaining why you believe the adult is in need of representation)

2. A capacity assessment report from a health professional (medical doctor, psychologist, other trained capacity assessor)

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 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. 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 guardian 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).

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. 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 2018) 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.

Vulnerable sector check.

It costs $50 to apply for a criminal record check/vulnerable sector check from the Halifax Regional Police. Contact your local police or RCMP detachment for information about the process and cost.

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 government 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.

A capacity assessment report can be prepared by a medical doctor or registered psychologist. They can also be prepared by nurse practitioners or registered nurses, occupational therapists, and social workers, after completing specific training developed by the Nova Scotia Public Trustee’s office.

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, 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 remove their representative decision-maker.

You do not have to take part in a capacity assessment.

If you refuse to be assessed or decide to end an assessment in progress, the health professional must stop the assessment and notify the person applying for representation that you have 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 you cooperate with an assessment.

A trained health professional can assess your ability to make decisions even if you do not want to cooperate. The assessor will look at information from other sources, like family and friends. The assessor can also ask for your personal health information.
The assessor might need your 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 you the results and give you a copy of the report.

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 is successful, 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.
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.

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/ under Adult Capacity and Decision-making Act, or call the Nova Scotia Public Trustee at 902-424-7760.

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/ under Adult Capacity and Decision-making Act, or call the Nova Scotia Public Trustee at 902-424-7760.
### Adult Capacity and Decision-Making

#### Do representatives get paid?

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

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. 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 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 sections on Power of Attorney and Health Care Treatment and Consent.
Where can I get more information?

• **Nova Scotia Public Trustee**: 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, or call Legal Aid at 1-877-420-6578.

• **A lawyer in private practice** who does estates work, including adult representation.

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

**General 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
www.legalinfo.org

Email: questions@legalinfo.org

The Legal Information Society of Nova Scotia can also refer you to a lawyer in private practice.
It is a good idea to think about who you want to make health care decisions for you when you are not capable of making these decisions yourself. Anyone could lose this ability, even temporarily.
It is a good idea to think ahead about who you would want to make health care decisions for you if you could not make these decisions yourself. Anyone could lose this ability, even for a short time.

A **personal directive** lets you choose someone to make health care and other personal care decisions for you if you cannot make them yourself. It can give that person guidelines to follow for making decisions.

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 guide can help you start to answer some of your questions about personal directives.

If you wish you can make your personal directive online at [www.legalinfo.org/forms/personal-directive](http://www.legalinfo.org/forms/personal-directive), 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](http://www.legalinfo.org/wills-and-estates-law/health-care)

Everyone in Nova Scotia has the right to make decisions for themselves about personal care and medical treatment 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 care or personal care decisions for yourself by writing a personal directive while you are well. A personal directive is a legal document that names another person to make personal care or health care decisions for you. This person is called a delegate or a proxy.
If you have not named someone to consent, or agree, to health care decisions, your doctor will ask your closest family member to consent for you. They will ask people in this order:

- spouse (including legally married spouses, registered domestic partner, or common-law partner),
- adult child,
- parent,
- grandparent,
- grandchild,
- aunt or uncle,
- niece or nephew, and then
- other relative.

There is another way that someone could be named to make health care decisions for you when you cannot do it. A relative or friend can apply to the courts to be named as your representative. The courts might allow them to give consent to health care for you. Before naming a representative, a judge must find that you are not capable of consenting and that the best thing for you is to have a representative. The Nova Scotia Public Trustee has information on this topic at www.novascotia.ca/just/pto. Look under Adult capacity and decision-making.

In very unusual cases, there is no representative or other person who can consent for you. In these cases the Nova Scotia Public Trustee may be asked to give consent for you 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 website at www.novascotia.ca/just/pto.

You must write a personal directive. In it, you may name any person to be your delegate who is at least 19 years old and mentally competent. If you want to name your spouse or partner and they are not yet 19 years old, you may do that. Mentally competent means the person must be able to make important decisions. The delegate does not have to be related to you.

Choose someone you can trust to carry out your wishes. Talk with your delegate about your wishes for your health care.
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.

Talk with your regular health care provider - your doctor or nurse - when writing your directive. This will help you to decide what treatments you agree to. Your doctor can explain the different ways to treat your medical condition 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 directive if you don’t already have one.
### Health Care Treatment and Consent

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where should I keep my personal directive?</td>
<td>Give your doctor a copy of the directive to keep in your medical file. You could also give a copy to your delegate and to your close family members. Keep the original at home in a special place. Tell your delegate or close family members where it is. Keep it in a firesafe box. 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. 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 medical person 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. If you are travelling, take a copy of your directive with you. If you are going into hospital or a continuing care home, take a copy with you. Some people like to put their delegate’s contact information in the document.</td>
</tr>
<tr>
<td>How specific should my health care instructions be?</td>
<td>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. Write down your values and beliefs in your personal directive as a way to assist in interpreting instructions and to help your delegate.</td>
</tr>
<tr>
<td>How often should I update my personal directive?</td>
<td>Update your personal directive when you make important life changes, like a common law relationship, marriage, remarriage, or divorce. Update it if your delegate or back-up dies or becomes unable to consent. Review your directive from time to time with your doctor. Medical treatments change regularly as research improves them. You might want to mention new treatment methods and technology. If you have</td>
</tr>
</tbody>
</table>
How can I end a personal directive?

You can **revoke**, or end, 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 ended 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 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 doctor. You could also give a copy to your delegate and to your family members.

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.

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 always ask your doctor or your medical specialist for more information, or you can go online. If you get information online, check to be sure that it comes from a reliable source.
Where can I find more information?

If you wish you can make your personal directive online at www.legalinfo.org/forms/personal-directive, 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

Nova Scotia Department of Justice, Personal Directives, including an information booklet, instructions for writing a personal directive, and a sample form: www.novascotia.ca/just/pda/

Government of Canada website about medical assistance in dying: 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 www.811.novascotia.ca

Medical assistance in dying in Nova Scotia: call the Nova Scotia Health Authority at 902-491-5892 or see their website, at www.nshealth.ca/about-us/medical-assistance-dying

Dying with Dignity Canada: 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

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/leaveparentcourt.asp

Nova Scotia Hospice Palliative Care Association: nshpca.ca

Canadian Hospice Palliative Care Association: www.chpca.ca/

Health Law Institute, Dalhousie University: End of Life Law and Policy in Canada: eol.law.dal.ca/
By writing a power of attorney, you can give another person authority to act on your behalf in case you are sick or become unable to make decisions about your affairs.
What is a power of attorney?

A power of attorney is a legal document that lets you give another person authority to act in financial and property matters on your behalf. If you let someone act on your behalf, you might hear someone call you the donor or grantor. The person receiving the authority is called the attorney (even if they aren’t a lawyer). Giving someone a power of attorney does not limit you from acting on your own behalf. You still have control of your financial affairs and are free to deal with your property, money, and investments.

To give someone else authority to make personal or health care decisions for you, you need a personal directive. See the section on Health Care Treatment and Consent or go to www.novascotia.ca/just/pda/.

You don’t have to give someone else power of attorney. But it is a way for you to choose who will act for you if you can’t act for yourself.

Why would I need a power of attorney?

Here are some reasons to write a power of attorney:

• You are too sick to deal with 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 to let someone deposit and withdraw money from your bank account.
• You are travelling or working away from home and you want to allow someone to deal with your financial affairs while you are away.
• You have an illness that will lessen your ability to make decisions or to move around in the future, and you want to plan for that.
• You want to make arrangements now while you are well and competent to prepare for the unexpected. Competent means able to make important decisions for yourself. If something like an accident should limit your ability to deal with your affairs or to get around, you will be ready.

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 or on Crown lands. 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 or Crown lands, you can get information about powers of attorney from:

• Indigenous Services Canada online www.canada.ca/en/indigenous-services-canada.html, under ‘Indian Status,’ then ‘Estate Services for First Nations’
If I give someone my power of attorney, can I still act on my own behalf?

Yes. If you give someone your power of attorney, you can still make your own decisions until you become unable to do so.

How much authority can I give in a power of attorney?

You choose what powers to give your attorney. There are two levels of responsibility:

- A general power of attorney gives your full authority to your attorney. There are no limits on what they can do on your behalf.
- A specific power of attorney says exactly what you allow your attorney to do on your behalf. It limits what your attorney can do.

A specific power of attorney is most often used when you need someone to sell a piece of land for you or to deal with a bank account for you. 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 period of weeks or months.

What duties does my attorney have?

Your attorney has a duty to take good care as they carry out what you have allowed them to do. This includes the duty to:

- stay within the authority you have given,
- use reasonable care and skill,
- act in your best interests,
- not profit personally from what is done for you (although you can specify how the attorney is compensated for helping you).

Go to 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 power of attorney for persons registered under the Indian Act who ordinarily live on reserve or on Crown lands.

• 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
  4. Mi’kmaw Wills and Estates & Matrimonial Real Property
Do I need a lawyer to write a power of attorney?

No. The law does not say that a lawyer must 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 download one from the internet. There are also books and kits available for powers of attorney.

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, insurance can 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,
- tell you about standard clauses to provide for unexpected events,
- tell you about options for wording the power of attorney,
- tell you about things you can do now to make it easier for your attorney to deal with your affairs later,
- answer any questions you might have,
- help you understand better what can happen when you give someone power of attorney,
- give proof that you had legal capacity when you made your power of attorney,
- give proof that you made your power of attorney by your own free choice, and free of undue influence.

If you decide to write your own power of attorney, 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.

Very important: get advice from a lawyer if you want a specific or a springing power of attorney. These documents must be written carefully to meet each person’s unique needs, and a lawyer should check them.

Lawyers charge a fee based upon the amount you want them to do. The fee depends on how complex the work is. You should discuss fees with the lawyer before you decide to hire them.

What does it cost for a lawyer to do a power of attorney?

You may be able to find a form online. Some office supply stores may have forms for general powers of attorney. There are also books that provide examples of forms.
**What are the general legal requirements for a power of attorney?**

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. You or your lawyer will have to draw up the form to fit your needs. You will usually need a special form from your bank if you want your attorney to access your bank account.

**How much will it cost?**

A general power of attorney form from an office supply store costs a few dollars. Banks do not charge a separate fee for their power of attorney forms.

The cost for lawyers’ fees will depend on how long it takes to draw up 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. For information about finding a lawyer, visit the Legal Information Society of Nova Scotia website ([www.legalinfo.org](http://www.legalinfo.org)) and click on “How we can help” and then on “I need a lawyer.”

Other costs:

- Your attorney may have small expenses, such as for postage and telephone.
- If your attorney is a 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 should include the terms of payment in the power of attorney document. Often a family member or a friend acts as an attorney without payment.

The legal requirements are:

**Adult:** In Nova Scotia, you must be aged 19 or older to:

- give a power of attorney, or
- act as attorney under a power of attorney.

**Capacity:** You must be mentally competent to give someone power of attorney. This is also called having legal capacity. It means you:

- know that you are making a power of attorney and
- understand what it means to give a power of attorney.
What is an affidavit of execution?

An affidavit of execution is a witness’s statement that they saw you sign the power of attorney, and that you were of the age of majority (at least 19 years old in Nova Scotia) when you signed it. The witness signs the affidavit of execution.

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

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.

A Commissioner of Oaths or a notary public must confirm that the affidavit of execution is true. All lawyers are Commissioners of Oaths. But 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 for ways to find one.

For more information on recording your power of attorney at the Land Registration Office, see these sections:

- Can a power of attorney be used to buy and sell land?
- Do powers of attorney have to be registered in Nova Scotia?

The following are not legal requirements, but they are a good idea:

- Put the date on the document.
- Put your initial and page number on each page so pages cannot be replaced or removed.
- Someone who is a competent adult and is not the attorney or the attorney’s spouse should witness your signature. That person should sign their name on the document. The witness does not need to know what is in your power of attorney.
- Arrange for the witness to swear an affidavit of execution.

An enduring power of attorney must be witnessed.

Anyone who is at least 19 years old and who is mentally competent can be your attorney. You should choose someone you trust and who will carry out your wishes.

If you do not wish to give a relative or friend power of attorney, you can appoint a lawyer or trust company. Also, depending on the circumstances, the Nova Scotia Public Trustee might agree to act as your attorney. 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 website at www.novascotia.ca/just/pto.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the person receiving the power of attorney have to sign the document?</td>
<td>No. The attorney does not have to sign the power of attorney document. But if they need access to any bank account, 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.</td>
</tr>
<tr>
<td>Can the person I choose as my attorney decide not to act?</td>
<td>Yes. Before you write your power of attorney, ask the person you want as your attorney if they will take on the job. If they refuse, you must appoint someone else. You should also ask someone to act as a back-up attorney. If you do not name a back-up power of attorney and your attorney tells you they no longer want to act as your attorney, your attorney will automatically be cancelled.</td>
</tr>
<tr>
<td>Can my attorney do my taxes?</td>
<td>Yes, but usually only if you include a special clause in your power of attorney that allows them to deal directly with the Canada Revenue Agency on your behalf.</td>
</tr>
<tr>
<td>Can a power of attorney be used to buy and sell land?</td>
<td>Yes, if you give your attorney the authority in your 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. You can find phone numbers for Land Registration Offices in the blue Government pages of the phone book under Land Registration or visit <a href="http://www.novascotia.ca">www.novascotia.ca</a> for locations. There is a fee to record documents. Fees change from time to time. 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.</td>
</tr>
<tr>
<td>What is an enduring power of attorney?</td>
<td>An <strong>enduring power of attorney</strong> is a special power of attorney document. It clearly says that your attorney’s power to act for you continues even if you can no longer make decisions for yourself. This is called becoming mentally incompetent or losing legal capacity. An ordinary power of attorney would no longer be valid and could not be used if you became mentally incompetent or could no longer make</td>
</tr>
</tbody>
</table>
## POWER OF ATTORNEY

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

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 more common as they allow someone 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 continue to act if you become mentally incompetent, 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.

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

<table>
<thead>
<tr>
<th><strong>What is a springing power of attorney?</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>A springing power of attorney is a special power of attorney document that says what event will make it “spring” into effect. That 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.</td>
</tr>
</tbody>
</table>

Many people have powers of attorney that are both springing and enduring. This means the power of attorney comes into effect when the donor cannot make their own decisions, and it continues until the donor can make decisions again.

**What can happen if I do not have an enduring power of attorney?**

If you become mentally incompetent and cannot take care of your affairs, a relative or friend may ask a court to appoint a representative to handle your affairs. This might not be the person that you would have chosen.

For information on adult representation, go to the Nova Scotia Public Trustee’s website at [www.novascotia.ca/just/pto](http://www.novascotia.ca/just/pto), under “Adult Capacity and Decision-making Act.”

For information on adult representation, go to the Nova Scotia Public Trustee’s website at [www.novascotia.ca/just/pto](http://www.novascotia.ca/just/pto), under Adult Capacity and Decision-making.
**POWER OF ATTORNEY**

**When is it too late to give a power of attorney?**

It is too late to give a power of attorney if you become mentally incompetent and are not able to make important decisions for yourself. For example, this can be an issue if you have progressive dementia. In this situation, you might need a medical opinion about your capacity to give a power of attorney. If you do not have capacity, a family member or other caring person might apply to court to be named as your representative decision-maker under the *Adult Capacity and Decision-making Act*.

**Are there special requirements for an enduring power of attorney?**

Yes. An enduring power of attorney has the legal requirements of an ordinary power of attorney, plus two more:

- Someone who is competent, at least 19 years old, and who is not the attorney or the attorney’s spouse must witness that you signed it.
- It must say that it will still be in effect if the donor loses capacity to make important property and financial decisions.

These special requirements are set out in the Nova Scotia *Powers of Attorney Act*.

**What happens if I become mentally incompetent?**

If you become mentally incompetent, or unable to make important decisions, the power of attorney becomes invalid unless you have an enduring power of attorney. An enduring power of attorney says that you wish the power to continue even if you become mentally incompetent.

If you do not have an enduring power of attorney and you become mentally incompetent, the court may name a representative under the *Adult Capacity and Decision-making Act* to handle your affairs. Go to the Nova Scotia Public Trustee’s website at [www.novascotia.ca/just/pto/](http://www.novascotia.ca/just/pto/) for information about the *Adult Capacity and Decision-making Act*.

**Can my attorney consent to medical treatment for me?**

Only if you give them the authority to do so. The Nova Scotia *Personal Directives Act* lets you choose a person to consent to medical treatment for you if you can no longer give consent. That person is called your delegate.

Allowing someone to give medical consent for you is usually done in a separate document called a personal directive. If you included consent to medical treatment in a power of attorney prepared before April 1, 2010, it is still valid.

You can learn more about personal directives in the section on Health Care Treatment and Consent, and at [www.legalinfo.org/forms/personal-directive](http://www.legalinfo.org/forms/personal-directive).

If you decide to include medical consent, your power of attorney must be in writing, and you and a witness must sign it. The witness cannot be your delegate or your delegate’s spouse. Both you and your delegate must be at least 19 years old and must be mentally competent.
**POWER OF ATTORNEY**

- **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. 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 have to make any changes.

  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 a 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.

  Do not put your power of attorney in a safe deposit box that is in your name only, as your attorney may not be able to get access to it quickly.

  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 it is needed.

- **How does a power of attorney end?**

  A power of attorney can end in any one of the ways listed below.

  Very important: You can end a power of attorney at any time and should do so if your attorney is abusing the power you gave them.

  You should always name a back-up attorney in your power of attorney. If your first choice is not able to act for any reason, your back-up attorney takes over authority to act on your behalf and your power of attorney document stays in effect.

  If you do not name a back-up attorney, your power of attorney document will have no legal effect after your attorney:

  - dies,
  - becomes incompetent, or
  - gives you notice that they no longer want to act for you.
You should give written notice when a power of attorney is cancelled or when an attorney’s authority ends. Any person or business that deals with the attorney will think the power of attorney is valid unless they are told it is not.

**Notice by the donor:** You can end a power of attorney by telling the attorney in writing. This is called giving notice. The notice must be in writing and dated, and you must sign it.

If you cancel your power of attorney, you should also do the things below:

- Write to all the people and businesses who deal with the attorney. Tell them that the power of attorney has been cancelled. Keep a copy of the letters.
- Ask everyone who has a copy of the 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 cancellation 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.

**Notice by the attorney:** Your attorney can give you notice that they no longer want to act as attorney. You should write to the bank and others and tell them that the power has been cancelled. Keep a copy of these letters. Ask your attorney to return the power of attorney document to you.

**Mental incompetence:** If you cannot make important decisions for yourself, your power of attorney ends automatically unless it is an enduring power of attorney.

If your attorney becomes mentally incompetent and you have not named a 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 becomes mentally incompetent, the Public Trustee will continue to act for that person.

**Death:** When you die, the power of attorney ends.

If the attorney dies, the power of attorney ends unless you have named a 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, see the section Public Trustee or go to www.novascotia.ca/just/pto/.

**Bankruptcy:** If you become bankrupt, your power of attorney ends and a licensed bankruptcy trustee takes over all your financial affairs. A bankruptcy trustee is a licensed person who manages the affairs of a bankrupt person.

If your attorney becomes bankrupt, your power of attorney is not automatically cancelled. It is only cancelled if the bankruptcy makes your attorney unfit to carry out their duties.

If your attorney is unfit to carry out their duties, your back-up attorney takes over and acts on your behalf, and your power of attorney document remains in effect.

**Time or task:** 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.

A power of attorney only has to 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.

Power of attorney gives someone else power to act for you. Banks and other financial institutions rely on the written power of attorney document. If you give your attorney power to withdraw money from your bank accounts, to deal with your property, or to buy and sell investments on your behalf, the bank will not usually contact you to see if you approve of what the attorney is doing.

Most people who are named in a power of attorney are honest. They try to do a good job and help you as they said they would and live up to their obligations.
What can I do to prevent misuse of a power of attorney?

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

• Choose carefully. Choose an attorney you can trust who will respect your wishes.
• Continue to pay attention to your 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 become incompetent, regular updates on how they are managing your affairs.
• If you have a lot of savings, property, or investments, think about appointing a lawyer or a trust company to act on your behalf. Look carefully into the costs of this before you make a decision.
• Give a specific rather than a general power of attorney, unless you find that you must give your full authority. For example, if you need your attorney to deal with just one bank account, then give them power to do only that.
• 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.
• If you have investments, arrange for your investment dealer to keep you informed about all dealings. You can also arrange for them to inform a third person if you become incompetent.
• Make a list of your property, jewellery, savings, furnishings, and investments. Keep it up to date. Give a copy to the person named in your power of attorney and to at least one other person you trust.
• Tell your banks, financial institutions, and investment dealers to tell you about any transactions over a set limit.

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

Below is a list of 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:

• At the very least, talk over your concerns with a lawyer or someone else you trust.
• Ask your attorney to account for how they have managed your affairs.
POWER OF ATTORNEY

- You can cancel their authority under your power of attorney and use your back-up attorney. If you did not name a back-up attorney, you could cancel the power of attorney.

- It is a criminal offence to misuse a power of attorney. If your attorney is using your property or money for their own benefit without your consent, you should talk with a lawyer and the police.

- If you have an enduring power of attorney and later become incompetent, your attorney can be required to report on how they have managed your property. The application would be made to the Supreme Court of Nova Scotia by someone who believes that your attorney abused their power. The court could order the attorney to account to the Public Trustee. The court can also remove the attorney and appoint someone else to manage your affairs.

- An attorney can be ordered to give reports to the Nova Scotia Public Trustee Office.

Under the *Adult Protection Act*, if an attorney or representative is neglecting the adult’s property or dealing with it in a way that is not in their best interests, or if an adult is in need of protection, a judge may inform the Public Trustee. The Public Trustee also looks into complaints about a representative under the *Adult Capacity and Decision-making Act*. For more information on the Public Trustee go to [www.novascotia.ca/just/pto/](http://www.novascotia.ca/just/pto/).

The legal requirements of powers of attorney change from province to province. Your power of attorney may be valid if it was made outside Nova Scotia. To find out for sure, ask a Nova Scotia lawyer to see if it meets the requirements of the law here.

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. For example, say you and your spouse spend the winter in Florida and you have given each other power of attorney. You should ask a lawyer whether your powers of attorney meet the requirements of Florida law.
Where can I get more information on making a power of attorney?

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

LISNS has online information about powers of attorney at www.legalinfo.org
The Legal Information Society of Nova Scotia can also refer you to a lawyer who does powers of attorney.

More information

- Contact a lawyer in private practice who works on wills and estates. See the Legal Information Society of Nova Scotia website at www.legalinfo.org for ways to find a lawyer.

- Visit www.seniors.gc.ca to read “What every older Canadian should know about Powers of Attorney and Joint Bank Accounts,” a federal and provincial government publication.
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.
What is the Public Trustee?

The Public Trustee's Office manages the financial and health care needs for some people when no one else is willing, suitable, or able to act. 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 can 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 investigates complaints about a representation order or guardianship 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.

The Public Trustee can apply to the Probate Court to manage the estate of a person who has died.

Under the Adult Capacity and Decision Making Act, 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, a doctor 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 treatment is in the best interests of the patient, the Public Trustee will give consent.

You can find more information in the sections “Adult Capacity and Decision-making,” “Powers of Attorney,” and “Health Care Treatment and Consent.”

**Does the Public Trustee help everyone who asks for help?**

The Public Trustee accepts cases based on their 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 more information about the work of the Public Trustee’s Office at their website, novascotia.ca/just/pto/

You can also call, write, or make an appointment to visit their office:

5670 Spring Garden Road
Suite 200
P.O. Box 685
Halifax, Nova Scotia B3J 2T3
Tel: 902-424-7760
Fax: 902-424-0616
Email: publictrustee@novascotia.ca

**Public Trustee—Health Care Decisions Division**

Phone: 902-424-4454
Fax: 902-428-2159
Email: PublicTrusteeHCD@novascotia.ca
Writing a will is a good idea. It is the best way to make sure that the things you own end up in the right hands after your death.
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.

What is an estate?

Your estate is what you own when you die. It typically includes:

- property (land, house, condo)
- money (cash, bank accounts, investments)
- personal belongings (household goods, vehicles, valuables like jewellery or artwork)

If you owe debts when you die, for example, have any unpaid credit card bills, those debts must be paid first out of what is in your estate, and what is left may then be distributed following your will or the law that applies when someone dies without a will.

Your estate typically excludes:

- property that you own jointly with someone else
- life insurance policies with a designated beneficiary
- accounts such as a registered savings account or tax-free savings account that allow you to name a beneficiary or someone who can receive the funds directly
- pension plans with a designated beneficiary.

Why make a will?

Nova Scotia law does not say that you must make a will, but it is a good idea to have 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
What happens if I die without a will?

Nova Scotia has a law called the *Intestate Succession Act*. This law says 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 spouse and had no children all your property goes to your spouse.
- If you are survived by your 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 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 spouse, your whole estate would go to your children.
- If you had no 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.
- The government would inherit if you have no surviving relatives.

A surviving spouse will always get up to $50,000 from the estate. If your surviving 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.

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. Your common law partner will not automatically inherit your property or money. Your common law partner may have to go to court to make a claim on your estate.
• If you die without a will, only your biological and adopted children can inherit. Stepchildren are not included.
• If you die without a will, your grandchildren will only inherit from your estate if their parent (your child) died before you.

If you and your spouse die at the same time or if you are a single parent when you die, someone will have to look after people who depend on you (a child, grandchild, or person with a disability). If you die without a will, or if you do not name someone in your will to look after your children or grandchildren, the court will have to appoint someone to do this. That person will be called your children’s guardian. A person must apply to court to be appointed. And the person the court appoints might not be someone you would have chosen.

If the court appoints a guardian to look after your children, it will also often state the terms of the guardianship. Those terms might not be what you would have chosen.

If you die without a will, there will be extra steps in the process of settling your estate, which can 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.

Family members may disagree and argue about how you intended to distribute your property.

Someone will have to 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.

The intestate law also applies if you do not deal with all your property in your will. 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.

The federal Indian Act has rules for making wills that apply to persons registered under the Indian Act who ordinarily live on reserve or on Crown lands. 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 or Crown lands, you can get information about making a will from:

• Indigenous Services Canada online www.canada.ca/en/indigenous-services-canada.html, under ‘Indian Status’, then ‘Estate Services for First Nations’
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 arranging for the care of pets. 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?

The law does not say that a lawyer must write your will. However, a will is an important legal document, so it is always best to have a lawyer write or at least review your will.

Your will must be worded very carefully to make sure that what you want actually happens. A lawyer can:

• make sure your will is clear about your wishes for after your death,
• make sure your will meets all legal requirements,
• make sure you provide for unforeseen events,
• help you deal with things that you might not have thought about yourself,
• tell you what you can do now to make it easier 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, free of undue influence, and
• give proof in the future that you had the capacity to make your will.

If you decide not to have a lawyer write your will, you can write it:

• 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
  4. Mi’kmaq Wills and Estates & Matrimonial Real Property.
  Go to 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 ordinarily live on reserve or on Crown lands.
What does it cost for a lawyer to do a will?

You can write your own will. You can write your own will yourself (see ‘What is a Holograph will?’ below) or fill in a blank form of a will that you buy from a store or online. There are also books and kits available to help people write their wills.

If you decide to write your own will, you should at least ask a lawyer to look it over to make sure that it meets all legal requirements and that it will do what you want it to.

A lawyer can help with special problems

- 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.

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 $200 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 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.

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 appoint an executor, and a back-up executor. An executor is the person who is responsible for carrying out the instructions in the will. More information about the executor is below, at Who looks after my will when I die?

Disposal of Property: This section of the will says who will get specific property (e.g., a cottage, an antique car) 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 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. For example, if you leave the cottage to your cousin, do you want his children to inherit it if he 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 who gets the property that remains after all specific gifts have been paid out or given to your beneficiaries.

If your will does not contain 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. Intestate means a person who dies without a will.

Other Clauses: A will may contain other clauses to suit your needs. For example, you may want to recommend a guardian for your children, create a trust fund, or set out the powers of the executor.

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. It means you:

• know that you are making a will and understand what a will is,
• know what property you own, and
• are aware of the people (like your spouse and children) that you would normally feel you should provide for.

If you become mentally incompetent after you have made your will, the will is still valid.

Mental competence to make a will can be an issue if a person's ability to think clearly is affected by illness, drugs, or pain. You should make your will while you are in good health so that no one questions your mental competence.

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
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 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.

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.” The witness must sign the affidavit of execution in front of a lawyer, notary, or designated Probate Court staff.
In most cases, you are free to deal with your property as you wish. However, in Nova Scotia, two laws place some limits on that freedom. Those laws are the *Testators’ Family Maintenance Act* and the *Matrimonial Property Act*. A **testator** is a person who makes a will.

**Testators’ Family Maintenance Act**
This law tries to make sure that you leave your **dependents** with money and support if possible and if they need it. Under this law, your children, including adopted children, and surviving married spouse or registered domestic partner are dependents.

This law does not include your common-law partner as a dependent unless you have a registered domestic partnership. Then your spouse is included from the date you registered the partnership. Divorced spouses are not dependents under this law.

If you do not provide for a dependent in your will, they can go to court and ask a judge to order support. 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, the testator, 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 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 property claim under this law should talk with a lawyer.

**The 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 partners 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 members**
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.

Any assets you own jointly with others go directly to the surviving joint owner on your death. They don’t form part of your estate, but are said to “pass outside the will”. For example, if you and your spouse own your home as joint tenants, the home goes directly to your spouse on your death. If you do not want this to happen there are legal ways to specify what you want, and you should talk with a lawyer.

Also, assets where you have designated a beneficiary, such as RRSPs and RRIFs, pass outside the will. When you die, the bank or trust company transfers the RRSP or RRIF, or pays it out, to the beneficiary you named, taking tax consequences into account. The same is true if you have life insurance that names a beneficiary. 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.

You can designate the beneficiary of a life insurance policy or benefit plan in your will, even though the proceeds “pass outside the will” and don’t form part of your estate. If you do, the beneficiary designation will alter any previous designation. Similarly, a beneficiary designation you make in your will may be changed by a later designation that is not in a will.

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.

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.
Who should I choose as an executor?

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.

Here are some things to keep in mind:

- The best executor is a trustworthy, reliable, and competent adult.
- Choose someone who is likely to outlive you.
- Choose someone who lives in your province to cut down on expenses.
- 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.
- 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.

You can name your lawyer as executor, but most lawyers do not act as executors. Before you name your lawyer as executor, ask the lawyer if they are willing to do this work.

Some people think about naming Nova Scotia’s Public Trustee as executor. This happens if they have no family member or friend they feel would be able or willing to act as executor. You must check first with the Office of the Public Trustee if you want them to act as your executor. Contact the Nova Scotia Public Trustee for more information or see the Public Trustee website at novascotia.ca/just/pto.

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 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. 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 power the Probate Court will give to an administrator.
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.
• 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.

Yes. A person named in your will as executor can refuse to act as executor. This is called renouncing. If the executor you named in your will refuses or is unable to act, your next of kin will have to apply to the court to appoint someone else. This causes delays and could cost money.

You should ask the person you want to name as executor if they are willing to take on the job before you name them in your will.

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.
Can I appoint joint executors?

Yes. You can appoint more than one executor (called co-executors) to share the responsibility. 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. 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 together all of 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.

Where should I keep my will?

You should keep your will in a safe place. You might not need it for many years, and you will have to keep track of where it is. It must be somewhere that your executor can find it easily, and you should tell your executor where they can find it.

The safest place to keep your will is a safe deposit box that is in your name only or that is held jointly with someone else. If you do not have a safe deposit box, keep your will in a fireproof place that is private, so that others cannot read the will before you die.

You could give your will to someone you trust. However, the person storing your will may move away or die.

If you hired a lawyer to write your will, you can ask them to keep a copy as well.

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.

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?

This is not a good idea. Often the will won’t be found or read until after the funeral. You should tell your wishes to the person who is likely to arrange the funeral, or leave separate written instructions.

Can I change my will?

Yes. You can change your will at any time up until you die as long as you are mentally competent. 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, deaths, marriages, or divorces in the family.

There are two usual ways to change your will:

• You can write a separate document called a *codicil* to change part of your will. The first words of a codicil name the will being changed. It says which clauses of the will are removed or changed and gives the new instructions. 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. A codicil is generally used only to make minor changes to a will.

• You can make a new will. It is wise to make a new will if you wish to make major changes to your will or if you already have several codicils. The first clause of a new will usually say: “I revoke all wills and testamentary dispositions of any nature and kind made by me.” The most recent will, as long as it is properly signed and witnessed, is the one that will be used following your death.

Do not change your will by marking or crossing out words in the will. It is much wiser to make a codicil or, even better, a new will.

You must be of sound mind at the time you make the changes. If you are not, your new will or codicil may be successfully challenged in court.

Cancelling your will

There are five ways to cancel your will, or parts of your will. This is called *revoking* a will.

- If you marry, your will is no longer valid (revoked) unless it says it is made as you prepare to marry that person, 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 spouse, provide a benefit to a spouse or appoint the spouse as executor. There...
Where can I get information on probate?

The Probate Courts in Nova Scotia make information available to the public. You may get copies of probate forms by visiting or by calling your local Probate Court office or by going to the Courts of Nova Scotia website, courts.ns.ca and click on the “Probate Court” tab.

The phone number for your local Probate Court office should be listed in the blue government pages of your phone book under Courts. Office location information is also available on the Courts of Nova Scotia website.

Where can I get more information on making a will?

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

LISNS has online information about Making a Will at www.legalinfo.org

The Legal Information Society of Nova Scotia can also refer you to a lawyer who does wills.

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.

• You can 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 can make a new will. Any new will that is properly executed cancels a previous will. A codicil cancels clauses in a will.

• You can 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 as long as there was no intention to cancel your will.

are exceptions: the will, a separation agreement, or marriage contract may say that these parts of your will are not affected by a divorce.

© Copyright, 2019 It’s In Your Hands: Legal Information for Seniors and their families www.legalinfo.org
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 section talks about laws that aim to protect older adults from different forms of abuse.
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. It includes both abuse and neglect.

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 might make threats to not visit or not allow your grandchildren to visit unless you give them money or gifts. They might pretend they are you to get your money from your bank account. Or they might misuse money, property, or authority such as a power of attorney. (For more information on financial abuse, see the section “Powers of Attorney.”)

Physical abuse is when someone hurts you by punching, kicking, slapping, shaking, burning, scalding with hot water, or in other ways. It also includes using physical restraints or giving the wrong medication.

Sexual abuse is any form of sexual activity with a person who does not want that activity (without consent). Some examples are sexual comments, intercourse, touching or fondling, or kissing.

Emotional, psychological or mental abuse is treating a person in ways that make them feel bad. It can include treating you like a child, making hurtful comments, continually criticizing or insulting, controlling or frightening you, locking you in a room, stopping you from having visitors, or threatening 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 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.

Cyber-abuse is when someone harasses you online, by email or by text message. They might share private photos of you without your consent, or they might harass you online or on social media.
**ABUSE OF OLDER ADULTS**

Sometimes they encourage people to commit suicide.

Sadly, most abuse of older adults comes from a family member, friend, or caregiver.

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

Financial abuse may include the following:

- manipulating you or coercion to gain access to your money or property (for example, forcing you to change your will or sign a contract)
- 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**

You should talk to the police and to a lawyer. Financial abuse such as theft, theft by a person holding power of attorney, forgery, and fraud are crimes under the Criminal Code of Canada.

Remember to keep detailed records. You might need records for a police investigation or if you go to court. Records can include a diary of events, copies of cancelled cheques, and copies of legal documents.

Also see the sections “Scams, Identity Theft and Other Fraud” and “Powers of Attorney.”

Nova Scotia has four key laws that protect older adults from abuse. They are:

- the Protection for Persons in Care Act
- the Adult Protection Act
- the Domestic Violence Intervention Act
- the Intimate Images and Cyber-protection Act.

The Criminal Code of Canada also protects older adults across the country.
Abuse can happen to patients and residents of health care facilities. 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
- homes for people with disabilities
- group homes
- residential centres

A service provider carrying out their duties and following recognized standards and practices and their policies and procedures are not abusing their patients or residents.

Health care 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 Health and Wellness. Anyone else can report suspected abuse by calling 1-800-225-7225.

You can find more information on the Department of Health and Wellness website under “Protection for Persons in Care Act.”

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 health facility.

If you believe that a senior in care is the victim of other 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.

If you believe a person in a care facility is being abused, you should report the abuse to the Department of Health and Wellness. The Minister looks into the report to decide if a formal investigation is needed. If so, the minister appoints someone to investigate.

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.

Anyone can also contact the police: the senior, a family member, an adult protection worker, a neighbour, or a friend.

The police will be involved if there is proof that the abuse is a criminal offence. This would happen if the investigator found signs 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.

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. Often a victim does not want to report abuse or to give evidence in court. The victim may be afraid of the abuser or the abuser might be someone the victim loves or likes. Fear is the major reason abuse is not reported. Sometimes the victim is embarrassed or ashamed about the abuse. Abuse is never the victim’s fault.
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.

Sometimes, a person physically abuses or neglects a senior 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 a senior from the physical abuse or neglect might also 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 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 Community Services. You can get more information on the Public Trustee’s website at 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 sections Public Trustee, Adult Capacity and Decision-making, and Powers of Attorney (under “What can I do if my attorney misuses the power of attorney?”).
How do I report abuse or neglect of a senior in their home or community?

You can report abuse to the Department of Health and Wellness, 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 report abuse. Sometimes the police or health care professionals do. It does not matter if the information is confidential or privileged—if they know it, they must report it. Relatives, neighbours, and friends also report abuse.

You do not have to be sure that abuse 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, 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, 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 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 a senior in their home?

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

- visiting the senior’s home
- talking with the senior
- meeting with the person accused of the abuse
- meeting with you, as the person who reported the abuse
- asking a doctor to assess the senior’s level of capacity, their need for care and attention, and whether they have been abused
- talking with the senior’s family, doctor, caregivers, and neighbours.
If the investigation shows that the senior can make competent decisions and that they are not refusing help because of threats, then Adult Protection Service will end its investigation. It may suggest services that the senior can use, but it cannot force the senior to use these services.

If adult protection workers find proof that a senior needs protection, they must help the senior get services to make things better.

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

The Adult Protection Services does not provide services itself. It helps the adult or the adult’s family find the services they need and can get in the community. Services can include home help or meals on wheels. They might talk with the senior about living somewhere else, such as shared housing, seniors’ apartments, and homes for special care. If the senior can have services in their own home, that will be done.

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.

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.

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

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.

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.

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 Health and Wellness 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 Health and Wellness can place the senior in a home for special care, to ensure 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 section “Public Trustee.”)

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 Health, 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.

No. A person could appeal 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.

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 to stop an abuser from contacting them. The senior can call the police if an abuser breaks the peace bond.

For more information on peace bonds, go to the end of this section.

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

No. The Department of Health and Wellness, Adult Protection Services, keeps files on reports of abuse in private homes and institutions. 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 forms. The website is at 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.

Workers who abuse adults in an institution may become known to staff at other institutions and will have trouble getting a job in other institutions.

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 under “Adult Capacity and Decision-making,” or by telephone at 902-424-7760.

For more information about representation orders and the
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
- 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 other legal options such as a peace bond.

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.

The Domestic Violence Intervention Act provides a quick process of review, notice, and hearing before a judge. For more information, you can 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:

- creating a website, blog, or profile that takes your identity
- sharing sensitive personal information online or breaking your confidence
- 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.

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/ 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).

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.

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
P.O. Box 685
Suite 405, 5670 Spring Garden Road
Halifax, Nova Scotia B3J 2T3
902-424-7760 (not toll-free)
https://novascotia.ca/just/pto/

Nova Scotia Department of Seniors
Barrington Tower, 15th floor
1894 Barrington Street
Halifax, Nova Scotia B3J 2A8
Email: seniors@NovaScotia.ca
1-844-277-0770 (toll-free)
902-424-0770 (metro)
902-424-0561 (fax)
Twitter: @NSSeniors

Seniors’ Safety Programs

Western Region

Hants County East
Seniors’ Safety Program Association of Hants County East
Coordinator: Leanne Taylor
Phone: 902-758-5805
Email: EHSeniorsafety@gmail.com
Website: www.seniorsafetyprogram.ca
Hants County West
Hants County West Seniors’ Safety Program
Coordinator: Jaclyn Silver
Phone: 902-798-7173
Email: hantsseniorsafety@gmail.com

Kings County
Kings County Seniors Safety Program Association
Coordinator: Michelle Parker
Berwick RCMP Community Office
210 Commercial Street, P.O. Box 857
Berwick, Nova Scotia B0P 1E0
Phone: 902-375-3602
Email: michelle.parker@rcmp-grc.gc.ca

Annapolis County
Annapolis County Seniors’ Safety Program Association
Coordinator: Sharon Elliott
c/o Annapolis RCMP Detachment
552 Granville Street
PO Box 340
Bridgetown, Nova Scotia B0S 1C0
Phone: 902-665-4481
Email: sharon.elliott@rcmp-grc.gc.ca

Digby County
Digby Town and Municipality RCMP Seniors’ Safety Program
Association
Coordinator: Dawn Thomas
c/o RCMP Detachment
P.O. Box 1149
Digby, Nova Scotia B0V 1A0
Phone: 902-245-2579
Email: dawn.thomas@rcmp-grc.gc.ca
Website: www.digby.ca/seniors.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
Yarmouth County
Yarmouth County Seniors’ Safety Program
Area: Municipalities of Argyle and Yarmouth
Coordinator: Peggy Boudreau and Doris Landry
156 Starrs Rd.
P.O. Box 5050
Yarmouth, Nova Scotia B5A 5J7
Phone: 902-881-4099
Email: peggy.boudreau@rcmp-grc.gc.ca
Email: doris.landry@rcmp-grc.gc.ca

Shelburne County
Shelburne County Senior Safety Society
Coordinators: Shawna Symonds & Wanda Mood
C/o Senior Services
P.O. Box 100
Barrington, Nova Scotia B0W 1E0
Phone: 1-800-565-0397 (toll-free)
Email: ssymonds@barringtonmunicipality.com
Website: http://ourseniorservices.com/

Queens County
Queens County Seniors’ Safety Program
C/o RCMP Queens Detachment
P.O. Box 1570
Liverpool, Nova Scotia B0T 1K0
Phone: 902-354-5721

Lunenburg County
Lunenburg Senior’s Safety Program
Coordinator: Chris Acomb
C/o Bridgewater Police Service
45 Exhibition Drive
Bridgewater, Nova Scotia B4V 0A6
Phone: (902) 543-3567
Email: chris.acomb@bridgewaterpolice.ca
Website: www.bridgewaterpolice.ca/safe.htm

Eastern Region

Cumberland County
Cumberland County Seniors’ Safety Program
Coordinator: Ray Bristol
ABUSE OF OLDER ADULTS

Email: bristorp@nshealth.ca
71 Victoria St. East
Amherst, Nova Scotia B4H 1X7
Phone: 902-667-7484

Pictou County
Pictou County Senior Safety Program
Coordinator: Barb Smith
c/o Pictou County Municipalities Crime Prevention Association (PCMCPA)
P.O. Box 100
Pictou, Nova Scotia B0K 1H0
Phone: 902-755-2886
Email: crimeprevention@bellaliant.net

Colchester County
Colchester County Seniors’ Safety Program
New program being developed in 2019
Coordinator: Hiring in 2019
Please direct all enquiries to David MacNeil
Chief of Police
Phone: (902) 897-3274
Email: dmacneil@truro.ca

Antigonish County
Antigonish Town and County Seniors’ Safety Program
Coordinator: Anita Stewart
c/o Antigonish RCMP -Antigonish Town and County Crime Prevention Association
4 Fairview Street
Antigonish, Nova Scotia B2G 1R3
Phone: 902-863-6500
Email: seniorsafetycoor@gmail.com
Website: www.antigonishcrimeprevention.ca/seniors-safety-programs

Cape Breton

Richmond County
Richmond County Seniors’ Safety Program
Coordinator: Michele MacPhee
Phone: (902) 587-2800 ext: 5
Email: seniorsafetycoordinator.dkmchc@gmail.com
Victoria County
Victoria County Seniors’ Safety Program
New Program being developed
Coordinator: Hiring in 2019
Direct all enquiries to the Municipality of the County of Victoria
Leanne MacEachen, CAO
902-295-3654
Leanne.maceachens@countyvictoria.ns.ca
or
Fraser Patterson, Municipal Councillor
902-674-2703
fraser.patterson@countyvictoria.ns.ca

Central Region

Halifax area
HRM Senior Safety Program
Coordinator: Jenny Theriault
133 Troop Avenue
Dartmouth, Nova Scotia B3B 2A7
Phone: 902-455-6393
Email: jenny.theriault@von.ca

Peace Bond Information
• Legal Info Nova Scotia’s information on Peace Bonds at legalinfo.org
• Visit courts.ns.ca or a Provincial Court for forms and information on how to apply for a Peace Bond
• Peace Bond fact sheet at canada.ca/victims

General legal information
Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902-455-3135
1-800-665-9779
www.legalinfo.org
Email: questions@legalinfo.org

The Legal Information Society of Nova Scotia can also refer you to a lawyer or mediator.
**abuse:** any act or neglect to act which threatens the health, security, or well-being of a person.

**access:** An old legal term which recognizes the right of and benefit to a child to spend time with an individual such as a parent who is not living with the child. The word access is no longer used in Nova Scotia or federal family law legislation. See *contact, interaction, parenting time*.

**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 word access is no longer used in Nova Scotia or federal family law legislation. See *contact, interaction, parenting time*.

**account:** the act of proving what one has done to meet one’s responsibilities.

**administrator:** the person appointed by the court to fill a role, e.g. the role of executor if none was named in the will of a deceased person.

**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 before a Commissioner of Oaths or a Notary Public.

**affidavit of execution:** a statement sworn by a witness about the signing of a document.

**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. This person is not necessarily a lawyer.

**beneficiary:** a person who receives property through a will as an inheritance. The plural is beneficiaries. Also called an heir.

**bond:** a type of insurance policy.

**capacity:** to be competent to perform a specific task, such as agreeing to a medical procedure. Also see testamentary capacity.

**capacity assessment:** testing by a health care professional (assessor) to find out if a person 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:** one section of a legal document, for example, of a will.
codicil: a legal document written to change part of an existing will

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 relationship with a partner of the same or opposite sex. See common law relationship.

common law relationship: an unregistered live-in relationship with a partner of the same or opposite sex

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 a parenting arrangement between two parties with assistance from a conciliator talking to the parties separately

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. See access, parenting time.

custodian: a person who has legal care and control of property that belongs to someone else

custody: the care and control of a child. Also see decision-making responsibility.

cyberbullying: when someone uses electronic communication, like email, text messaging, or social media, to harm your health or well-being.

decision-making responsibility: under the Divorce Act, describes who is responsible to make significant decisions for a child, and/or how decisions will be made. This has traditionally been called ‘custody’. The Divorce Act no longer uses the word custody.

delegate: the person legally authorized to make decisions for another person. Also informally called a proxy.

dependent: a person whom another person is under a legal obligation to support, such as a spouse or a child under age 19

domestic partnership: see registered domestic partnership
**donor:** the person giving someone else the authority to act on the person’s behalf in a power of attorney document

**elder abuse:** see senior abuse

**enduring power of attorney:** a legal document which authorizes a person, called an attorney, or company to act on behalf of another person, in financial and property matters even if the person becomes mentally incapacitated or incompetent. One type of power of attorney.

**enforcement order:** a particular kind of court order which gives the police the power to enforce a contact order

**estate:** all of the property owned by a deceased person when they die

**euthanasia:** 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, responsible for seeing that everything is handled properly

**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. Ends if you become mentally incompetent.

**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 new 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.

**holograph will:** a handwritten will signed and written by the testator but not witnessed

**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 as a result 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 a probating will

joint tenancy: a type of ownership of property in which each person has equal ownership. See tenancy in common.

least intrusive: a representative must not interfere with the privacy and freedom of an adult in need of representation unless absolutely necessary. See Adult Capacity and Decision-making Act.

living will: a form of instruction directive in which a person sets out one’s 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.

marriage contract: a prenuptial agreement between two persons who are planning to marry to one another

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

neglect: the failure to provide a person to whom you owe responsibility with what the person needs, 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

order: a document authorized and signed by a judge

ordinary power of attorney: see power of attorney.

parenting time: the time a child spends with a parent or guardian because of a court order or agreement.

permanent care: the placement of a child in care which resembles that of wise and conscientious parents

personal directive: a type of advance health care directive which allows you to authorize someone else to make decisions about personal care and consent to medical treatment on your behalf
**personal representative:** an executor of a will or administrator or an estate. Not the same as a representative under the Adult Capacity and Decision-making Act.

**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 the person’s death

**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.

**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.

**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. Also see delegate.

**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

**registered domestic partnership:** a declaration filed with the province of Nova Scotia by two people of the same or opposite sex who are living in a conjugal relationship

**renunciation:** a refusal to act or fulfill a function to which you have has been named, such as refusing to act as an executor.

**representative:** a person with legal authority 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.

**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 all specified gifts in a will have been paid or given to one or more beneficiaries

**retainer:** the payment of 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

**scam:** see fraud.

**seeking leave of the court:** getting the court’s permission to make an application to ask it for something, such as custody.
**WHAT DO THE WORDS MEAN?**

**senior abuse:** any action which threatens the health, security, or well-being of an older person. Also called elder abuse.

**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.

**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

**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 enduring power of attorney document which says what future event will cause it to come or “spring” into effect. Also see power of attorney.

**surety:** the person or company which guarantees to pay money or perform acts if a bond fails

**tenant:** a person who owns an asset, such as a joint bank account

**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 a 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.

**undue influence:** a situation in which someone exerts an inappropriate amount of pressure on another person, for example while the person writes their will

**will:** a legal document in which you say what you want done with your property after death
For more information on the topics covered in *It’s in Your Hands: Legal Information for Seniors and their Families*, and on the law in Nova Scotia, go to the Legal Information Society of Nova Scotia (LISNS) website at www.legalinfo.org. Click on “Wills and Estates” or use the search function.

*It’s in Your Hands* provides general information only. It is not meant to replace legal advice from a lawyer. We try to keep information accurate and up-to-date. However, laws do change. You should check with a lawyer or call LISNS’s Legal Information Line for changes to laws mentioned. If you have a legal question, or you need help to find a lawyer or mediator in your area, call Legal Info Nova Scotia’s Legal Information Line, Lawyer and Mediator Referral Service. The phone number is 1-800-665-9779 or 902-455-3135 in HRM, or send an email to questions@legalinfo.org.

LISNS owns the copyright for *It’s in Your Hands*. It is not permitted to further reproduce and distribute this guide without the written permission of LISNS. You can also access the guide and download it from LISNS’s website at www.legalinfo.org.