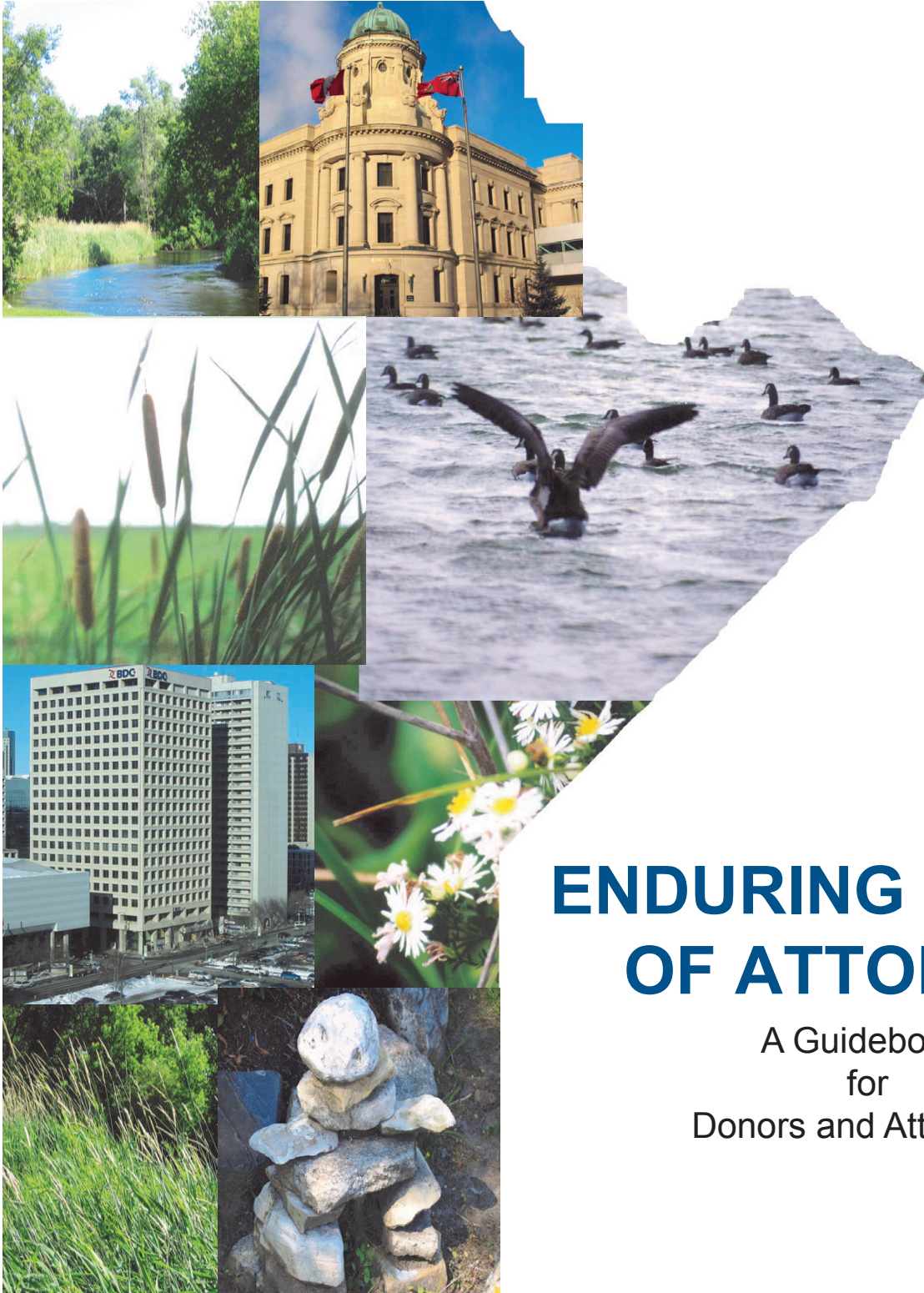




Public Guardian and
Trustee of Manitoba



ENDURING POWER OF ATTORNEY

A Guidebook
for
Donors and Attorneys

Prepared by: The Public Guardian and Trustee of Manitoba
155 Carlton Street - Suite 500
Winnipeg MB R3C 5R9
www.gov.mb.ca/pgt

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NOTE: This guidebook is not a legal document. It contains general information and is provided for the convenience and guidance of donors and attorneys under powers of attorney. If interpretation problems occur, please refer to your lawyer or the appropriate legislation.

This publication is available in multiple formats upon request. For further information please contact our office at (204) 945-2700.

POWER OF ATTORNEY GUIDEBOOK

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CHAPTER I

INTRODUCTION

A. What is a power of attorney?

A power of attorney is a legal document in which one person (called the donor) gives authority to another person (called the attorney) to manage some or all of the donor's financial affairs. Powers of attorney deal only with financial affairs and not with personal decisions.

B. What is an enduring power of attorney?

The law provides that the authority under a power of attorney ends if the donor becomes mentally incompetent and incapable of managing their own financial affairs. However, the law also allows a donor to include a clause in the power of attorney document allowing the attorney to continue acting even if the donor later becomes mentally incompetent. If this clause (called the enduring clause) is included in the power of attorney, the document is referred to as an enduring power of attorney.

This guidebook deals only with enduring powers of attorney.

Some examples of the wording of the enduring clause are:

The authority given to my attorney in this power of attorney is to remain in full force and effect unless and until expressly revoked by me, notwithstanding any future or periodic mental infirmity or incompetency on my part, or

The authority of my attorney shall not terminate but shall continue despite any mental infirmity which I may suffer.

These are only examples of enduring clauses. The donor may choose different wording.

In Manitoba, the rules concerning enduring powers of attorney are contained mainly in *The Powers of Attorney Act* S.M.1996, c.62. The Act is not reproduced here.

Acts and Regulations are available online free of charge on The Manitoba Laws website at www.gov.mb.ca/laws.

Print copies are available for purchase from Statutory Publications.

Phone: (204) 945-3103
Email: kingsprinter@gov.mb.ca

Or online at:
<http://web2.gov.mb.ca/laws/statutes/index.php>

CHAPTER II

Why have an enduring power of attorney?

Enduring powers of attorney are very useful to people who are concerned that a time may come when they are unable to look after their own affairs and they want to choose who will manage their affairs and how they will do it.

Enduring powers of attorney can tell people what the donor's wishes are, even if the donor no longer can express those wishes. They can often prevent the need for a costly court application to have a person (called a *committee*) appointed to manage the person's affairs.

There are many issues to consider before making an enduring power of attorney. The advice of a lawyer should be sought before signing, as they will be able to help advise what should be included.

CHAPTER III

Who should be the attorney?

People considering an enduring power of attorney should think very carefully about who to appoint as attorney. It should be someone who can be trusted completely. Also, the person chosen should be a competent money manager. If a person cannot handle their own finances properly, chances are they will not be able to manage someone else's either.

Section 16 of *The Powers of Attorney Act (The P.A. Act)* provides that in order to act as an attorney, a person must be:

- an adult;
- mentally competent; and
- not an undischarged bankrupt.

The person need not be a resident of Manitoba, or even of Canada. However, if the attorney does not live reasonably close to the donor, will it be convenient for them to manage the donor's affairs? Will they be able to do the banking from a distance and tend to any needs the donor might have? Will they be accessible to people with whom the donor might have dealings?

More than one person can be appointed as attorney. They may be appointed to act jointly (make decisions together) or successively (the second-named person only makes decisions if the first-named cannot or will not). If the donor is appointing more than one person to make decisions together, they should make certain that they can get along with each other and are likely to agree on the decisions that need to be made. The donor should talk to them about their wishes and any concerns they may have before they are named as attorneys, and be satisfied that they will be able to act together and in the donor's best interests.

If attorneys are to make decisions jointly, the donor must expressly say so in the enduring power of attorney. Otherwise, they will be deemed to be acting successively in the order in which they are named. Further information about how joint or successive attorneys make decisions will be provided later in this guidebook.

CHAPTER IV

How to make an enduring power of attorney?

There is no required or standard form of enduring power of attorney. Forms are available at stationery stores, in kits or can be made up by the donor. However, the donor should see a lawyer prior to preparing or signing a power of attorney to obtain advice about the form it should take, what it should include, and who should act as attorney.

Lawyers will usually be able to provide advice and prepare the form for a fee. It is money well spent to ensure that your enduring power of attorney is properly made and will best protect the donor's interests and wishes in the future.

In order to make an enduring power of attorney, the donor must be mentally competent. The donor must be able to understand the nature and effect of the document being signed. It must be signed voluntarily and without duress or pressure from another person.

Although the enduring power of attorney does not have to be in any particular form, it must conform with certain formal requirements. Section 10 of *The P.A. Act* provides that it must:

- be in writing;
- be signed by the donor in the presence of a witness, or the donor must acknowledge their signature in the presence of a witness;
- be signed by the witness in the presence of the donor; and
- provide that it is to continue despite the mental incompetence of the donor.

A person who cannot sign his or her own name may ask another person to sign on his or her behalf, as long as the donor acknowledges the request in the presence of the witness.

Section 11 of *The P.A. Act* provides who can be a witness to an enduring power of attorney.

All enduring powers of attorney made after April 7, 1997 must be witnessed by a person from one of the following professions:

- a person registered or qualified to be registered to solemnize marriages in Manitoba;
- a judge, justice of the peace or magistrate in Manitoba;
- a qualified medical practitioner in Manitoba;
- a notary public for Manitoba;
- a lawyer entitled to practice in Manitoba; or
- a member of the R.C.M.P or a police officer in a municipal police force in Manitoba.

Neither the attorney nor their spouse can act as the witness. The reason for these rules is to protect the donor and to ensure the enduring power of attorney is being made properly. There is an assumption that someone from one of the above professions will have a vested interest in making sure that the document is properly signed by a person who is mentally competent to do so and is acting voluntarily.

The witness should sign a document called an affidavit of execution. This document must be signed in the presence of a person entitled to take oaths in Manitoba, such as a commissioner for oaths, lawyer or notary public. The affidavit should be attached to the enduring power of attorney as evidence that the document was properly executed.

The above rules about witnessing enduring powers of attorney apply to all enduring powers of attorney signed on or after April 7, 1997. If an enduring power of attorney was signed before that date, and was according to the rules in place at that time, it will continue to be valid.

CHAPTER V

What should be included in the enduring power of attorney?

Some of the things that must be included, such as the enduring clause, have been referred to previously in this guidebook. Some other things that could be included are discussed below. An example of an enduring power of attorney is shown as Appendix A.

A. General or Limited?

An enduring power of attorney can be general in scope, covering all of the donor's financial affairs and assets, or very limited. Powers of attorney provided by banks are usually limited, in that they only deal with the assets the donor has in that financial institution. The donor should decide what type of authority they wish to give the attorney and specifically say so in the document. For example, even when granting general authority to an attorney, the donor should ensure it specifically states whether the attorney has authority to sell real property. The attorney and the people they have to deal with should not have to guess what the donor meant.

B. Homesteads Act

The Homesteads Act in Manitoba provides that a spouse or common law partner cannot sell the marital home without obtaining the consent of the other spouse or partner. If the donor intends the attorney to have authority to sign such a consent, the donor must say so. If the attorney is the donor's spouse or common law partner, they cannot sign the consent on the donor's behalf. The donor can appoint an alternate attorney who is not their spouse or common law partner with specific authority to consent to the sale or transfer of the marital home. A specific form of consent must be completed and attached to the power of attorney document (see Page 21).

C. Accountability

An attorney has a duty to keep the donor's assets separate and to keep proper accounts. Attorneys should always be sure to record and detail all transactions so there is no question later as to how the assets were managed. This protects both the attorney and the donor.

However, once a donor becomes mentally incompetent, they are unlikely to be able to watch over the attorney to ensure everything is being managed properly. In the past, this led to a significant amount of financial abuse. A dishonest attorney could do what they pleased with the donor's money and the chances were good that no one would find out.

This led to provisions being added to *The P.A. Act* to help protect donors, and to keep the attorney accountable to someone after the donor becomes incompetent.

A donor can name someone in the enduring power of attorney to whom the attorney must account on demand. The donor should consult with the person in advance to ensure that they agree to act and understand what is expected.

If a specific person is not named or is no longer able to act, the attorney must account annually to the donor's nearest relative. For these purposes, a nearest relative is defined in Section 1 of *The P.A. Act* as follows:

The adult person who is related to the donor, mentally competent and first listed in the following series:

1. spouse or common law partner
2. child
3. grandchild
4. great-grandchild
5. parent
6. sibling
7. niece or nephew

If there is no one who meets the above definition, the attorney must account to The Public Guardian and Trustee (PGT). The attorney and their spouse do not qualify as nearest relatives for this purpose.

The person receiving the accounting has no duty or liability to take any action regarding the accounting. However, it is hoped that such a person who suspects or finds mismanagement would take appropriate action to resolve the situation.

There is no rule as to the form the accounting must take. However, it follows that the accounting should be:

- complete, containing a record of all assets, transactions, credits and debits;
- organized; and
- legible.

An example of the form of accounting required by the Court of King's Bench for court-appointed committees is shown as Appendix B. Although this form is not required, except when accounts are being presented to the court, it is advisable to follow this form in case the attorney is eventually required to account.

D. Alternate or Joint Attorneys

1. Joint Attorneys

As stated previously, more than one person may be named as attorney. If the donor wishes them to make decisions together (or jointly) they must specifically say so in the enduring power of attorney.

It is possible that one of the named attorneys might later be unable to act. It is also possible that there might be a disagreement among the attorneys about a decision that needs to be made.

A provision can be included in the enduring power of attorney indicating how disputes between attorneys are to be resolved. However, according to Section 18 of *The P.A. Act* if no such provision is included, the following rules apply:

- A decision of the majority is deemed to be a decision of all.
- If one or more attorneys die, or are unable or unavailable to continue acting, the remaining attorneys may make the decision and the decision of the majority is deemed to be the decision of all.
- If there is no majority, the first named attorney may make the decision.
- If one of the attorneys disagrees with the decision of the others, they will not be liable for the consequences of the decision if they do not vote or consent to it, and provide a written objection to each of the other attorneys as soon as reasonably possible after learning of the decision.

2. Alternate Attorneys

It might be appropriate to name an alternate attorney to act in the event the first named attorney is unavailable to act. If this is the case, it should be very clear in the enduring power of attorney under what circumstances the alternate attorney may act.

E. Substitution of the Attorney

Generally speaking, an attorney cannot delegate their authority to another person. However, the donor may include a provision in the enduring power of attorney allowing the attorney to do so. An example of when this might be useful is if the attorney knows they will be unavailable to act for a period of time and wants to appoint someone to manage the donor's affairs during that time. The disadvantage to the donor is that they have not chosen this person and may not have approved of the choice while competent.

Another way of dealing with this problem would be for the donor to name an alternate attorney to act in the absence of the first named attorney.

F. Attorney's Compensation

If the donor wishes the attorney to be paid for acting, there should be a provision to that effect in the enduring power of attorney. It is arguable that if the document does not contain such a provision, the attorney cannot charge for the service.

The donor should discuss the issue of compensation with the attorney in advance and agree on whether the attorney will be paid, and if so, how compensation will be calculated. For example, some attorneys charge fees based on an hourly rate. Some charge based on the number of transactions conducted or based on a percentage of the value of the assets managed.

Whether or not the attorney is compensated governs the duty of care an attorney has to the donor (this will be discussed in more detail below). The issue of compensation is, therefore, an important one. If it is not clearly dealt with, it can lead to arguments and sometimes expensive legal fees after the fact.

G. Springing Powers of Attorney

The donor can include a provision that specifies an event which will trigger the authority of the attorney to act. This is called a springing power of attorney. The donor may also name one or more people, referred to as declarants, to declare in writing that the triggering event has happened. The attorney may be the declarant.

The most common reason a donor would include a springing clause would be to ensure that the authority of the attorney starts only after the donor is declared mentally incompetent. It is up to the donor to define what constitutes the declaration of mental incompetence or any other triggering event. An example of a springing clause is as follows:

This power of attorney will come into force upon two qualified medical practitioners declaring in writing that I am no longer mentally competent to manage my financial affairs.

In the example above, the named declarants, having been satisfied that the triggering event has happened, would so declare in writing. Third parties, such as banks or income sources, may rely on the declarants' declaration, without having to review the actual medical reports.

If the triggering event is the mental incompetence of the donor and no declarant is named, or the declarant is unable to act, two duly qualified medical practitioners may act as declarants. Alternatively, an application may be made to court for the declaration.

CHAPTER VI

Duties and powers of the attorney

A. Duty to Act in Donor's Interests

An attorney under an enduring power of attorney acts as a trustee for the donor. They have a duty to represent the interests of the donor and never to place themselves in a position of conflict with the donor. For example, the attorney cannot use the donor's assets for their own benefit or the benefit of third parties to the detriment of the donor. The attorney should never borrow money from the donor, nor lend money on the donor's behalf without the competent donor's consent.

If the donor is mentally incompetent, the attorney might be required to spend money to properly maintain the donor or their dependents. The attorney should balance the donor's resources with the lifestyle the donor enjoyed prior to becoming incompetent. Gifts by the donor to relatives or third parties should be considered only when the donor is able to receive some benefit or pleasure from making a gift, or has specifically provided that such gifts should continue to be made.

The requirement for an attorney to account has already been discussed. Attorneys should support their accounting records with bank and investment statements and receipts and invoices wherever possible.

B. Standard of Care

An attorney who receives compensation for their services must meet a higher standard of care than one who does not. The compensated attorney must "exercise the judgment and care that **a person of prudence, discretion and intelligence in the business of managing the affairs of others** is required to exercise." (Section 19(3) of *The P.A. Act.*)

An attorney who does not receive compensation must "exercise the judgment and care that **a person of prudence, discretion and intelligence would exercise in the conduct of his or her own affairs.**" (Section 19(2) of *The P.A. Act.*)

In either case, if the attorney does not meet the required standard of care, they might be liable to the donor for any loss that results.

C. Duty to Continue Acting

Once an attorney agrees to act, or does act under the enduring power of attorney, and the attorney knows or reasonably should know that the donor has become mentally incompetent, the attorney must act. The attorney cannot decline to act or renounce the appointment under those circumstances without the permission of the Court of King's Bench. The reason is that the donor, while competent, placed trust in the attorney, and depended on them to act when appropriate. It would be unfair to the donor, having placed their affairs in order, to be left without an attorney. An attorney who does not act, or obtain court approval to be removed, will be liable to the donor for any loss that results. This only applies to attorneys who have specifically agreed with the donor to act, or who have exercised authority under the enduring power of attorney. A person named without their knowledge who does nothing under the enduring power of attorney will not be required to continue, or be responsible for any loss.

D. General Duties

A list of things an attorney should do includes the following:

1. Keep all funds in a separate account or accounts. If the donor had a joint account with the attorney, it should be closed and the donor's share kept separately.
2. To the extent possibly, pay the donor's bills and obligations.

3. Collect and arrange for safekeeping of important documents such as wills, insurance policies, titles to land, records, etc.
4. Make sure personal property is safe and kept in a secure place.
5. If vacant real property is being maintained, make sure it is secure, water is turned off, etc. and that it is inspected as required to maintain insurance coverage.
6. Arrange for insurance on real and personal property.
7. Apply for all applicable pensions or benefits (eg. Workers Compensation, Compensation for Victims of Crime, Canada Pension, Old Age Pension, Guaranteed Income Supplement, Veterans Allowances, Employment Insurance Benefits, Social Allowances Benefits, etc.).
8. Collect income tax records and file returns. Pay taxes in a timely manner.
9. Cancel charge accounts, if appropriate.
10. Notify banks, utilities, post office, Manitoba Health and other relevant entities of the power of attorney and change the address for correspondence.
11. Collect all assets or debts owing to the donor by third parties.
12. Inquire about pre-arranged funeral plans or cemetery plots.
13. If the donor owns a vehicle:
 - (a) if the donor will not be able to use the vehicle in the future, it should be sold;
 - (b) do not drive the vehicle or allow others to drive it;
 - (c) apply for an insurance refund after it is sold;
 - (d) if the donor will require the use of the vehicle in the future, make arrangements for proper storage and insurance.
14. Invest money not needed for immediate maintenance.
15. If the attorney intends to request compensation, they should keep accurate records of time spent administering the donor's affairs.

E. Duty to Account

An attorney has a duty to account as set out in the enduring power of attorney or to the nearest relative. If they do not do so, or the accounting is not satisfactory, the attorney might be found liable for any loss to the donor, and might be removed by the court.

CHAPTER VII

When does an enduring power of attorney come into effect?

An enduring power of attorney begins:

- when the triggering event set out in the springing clause occurs; or
- when the donor is no longer mentally competent to manage his or her financial affairs; or
- earlier, with the consent of the mentally competent donor.

A donor does not automatically hand over authority to the attorney as soon as the enduring power of attorney is signed. It may remain unused for a lengthy period of time before it is needed. During that time, the donor may continue to manage their affairs in the usual way. It is entirely within the control of the mentally competent donor as to when an attorney will begin acting. On the other hand, the donor might choose to have the attorney act right away, or might choose to share authority with the attorney.

CHAPTER VIII

Suspension of the enduring power of attorney

Circumstances might arise where The PGT of Manitoba is appointed as committee of a person who has previously made a valid enduring power of attorney. Some examples of situations where this could happen are:

- the donor is declared by a doctor to be mentally incompetent, and in need of someone to manage their affairs, but the doctor is unaware of the existence of the enduring power of attorney;
- the existence of the enduring power of attorney is known but there are concerns that the attorney is not acting properly and in the interests of the donor; or
- personal decisions must be made on behalf of the mentally incompetent donor and there is no one willing, able or suitable to make those decisions.

In any of the above circumstances, a doctor might find the person to be mentally incompetent and apply to have The PGT appointed to manage their affairs.

Once appointed, The PGT must make reasonable inquiries to determine if a valid power of attorney exists. If so, The PGT will give written notice to the donor, attorney and the donor's nearest relative that the power of attorney is **temporarily suspended**.

The PGT must then conduct an investigation to determine whether it is in the best interests of the donor for The PGT to continue acting as committee or whether the attorney should continue acting under the enduring power of attorney.

The investigation will start immediately, and will usually begin with a request to the attorney to account for the period of time they have been acting. The PGT wishes the investigation to be completed quickly and with minimum disruption to the donor's affairs. If necessary, The PGT will manage the donor's affairs during the course of the investigation.

In deciding whether the donor's best interests will be served by The PGT continuing to act, The PGT will consider the following:

- whether the attorney has been properly managing the donor's financial affairs in accordance with the enduring power of attorney, *The P.A. Act* and other relevant legislation;
- the wishes of the donor, if they can be determined;
- information provided by family members of the donor;
- the willingness of the attorney to continue acting; or
- whether the attorney is willing, suitable and authorized to make the necessary decisions, including personal care decisions.

Once the investigation is complete, The PGT will provide notification of the decision to the donor, attorney, nearest relative of the donor and the official who appointed The PGT as committee. The enduring power of attorney will then be either terminated or reinstated, as the case may be. If the power of attorney is reinstated, the appointment of The PGT as committee ends and The PGT will take no further action with regard to the donor's affairs. Interested parties who are dissatisfied with the decision may make an application to court or ask The PGT to do so.

CHAPTER IX

How is an enduring power of attorney terminated?

According to Section 13 of *The P.A. Act*, an Enduring Power of Attorney ends when any of the following happen:

- a substitute decision maker for property is appointed for the donor pursuant to *The Adults Living with an Intellectual Disability Act*;
- a committee of the donor's property is appointed by the Court of King's Bench;
- the donor becomes bankrupt, unless otherwise provided for in the enduring power of attorney;
- the attorney becomes bankrupt, mentally incompetent or dies;
- the donor dies;
- the donor, while mentally competent, revokes the enduring power of attorney in writing;
- the Court of King's Bench terminates the appointment; or
- the attorney renounces the appointment with the approval of the court.

CHAPTER X

Application to Court of King's Bench

Interested parties who have a concern about the enduring power of attorney or the actions of the attorney can apply to Court of King's Bench to have the issue reviewed. Section 24(2) of *The P.A. Act* provides that any of the following persons can make such an application:

- the attorney;
- the donor's nearest relative;
- a person named in the enduring power of attorney to receive an accounting;
- another interested person, with approval of the court; or
- The PGT.

If such an application is made, the judge will review the enduring power of attorney to try to determine the donor's intentions. The judge can make any order concerning the enduring power of attorney they consider appropriate, including:

- an order giving advice or directions on any matter respecting the management of the donor's financial affairs;
- a declaration that the donor is mentally incompetent;
- a declaration that the power of attorney is invalid or terminated;
- an order removing the named attorney;
- an order requiring the attorney to provide an accounting to the court;
- if the enduring power of attorney provides for it, an order varying the attorney's powers; or
- if the enduring power of attorney provides for it, an order appointing a person as attorney in place of the named attorney.

(See Section 24(1) of *The P.A. Act*.)

An application to court to resolve a dispute concerning an enduring power of attorney should be considered only as a last resort. It is important to try to resolve the issue among the interested parties in order to reduce the costs to the donor associated with a court application.

CHAPTER XI

The Power of Attorney Registry

When a donor has made an enduring power of attorney, the named attorney should either be asked to keep it in a safe place until it is needed or told by the donor where it is kept. It should be easily accessible to the attorney if necessary.

The donor may register the enduring power of attorney with The PGT by filing a copy of it with The PGT's office. It will be kept in a safe place and a record kept of it. This may be of assistance to the donor in the event they are hospitalized or under the care of a doctor who is considering requesting the appointment of a committee but wishes first to know if there is a power of attorney in existence. A call to The PGT's office could prevent the appointment of a committee when it is unnecessary.

APPENDIX "A"

Dated: October 15, 2009

RICHARD MARTIN

Donor

TO

MARIE MARTIN

Attorney

ENDURING POWER OF ATTORNEY

This is an example of a
general power of attorney
covering all assets
belonging to the donor.

POWER OF ATTORNEY

I, RICHARD MARTIN, of the City of Winnipeg, in the Province of Manitoba, appoint Marie Martin, to be my attorney, for my sole benefit;

- or -

I, RICHARD MARTIN, of the City of Winnipeg, in the Province of Manitoba, appoint Marie Martin and Guy Martin to be my attorneys, for my sole benefit. My attorneys are to act jointly,

- or -

I, RICHARD MARTIN, appoint Marie Martin, of the City of Winnipeg, in the Province of Manitoba, to be my attorney, but if she is unable for any reason to exercise her authority for any period of time exceeding 7 days, I appoint Guy Martin to be my attorney in her place with full power and authority.

My attorney shall have the following powers and authorities:

1. When Authority Shall Take Effect

The authority of my attorney shall take effect at such time as two duly qualified medical practitioners certify in writing that I am no longer mentally competent to manage my own financial affairs. I appoint John Doe as Declarant, to declare in writing, that the authority of my attorney is in full force and effect.

2. Gather in Assets

- Gather in all my money and financial assets (funds).
- Set up an account for my funds at (name of financial institution).
- Deposit my funds in my account.

This paragraph appoints joint attorneys with authority to make decisions together.

This paragraph appoints alternate attorneys and sets out when the alternate may act.

This is the springing clause and appoints the declarant.

This paragraph allows the attorney to collect in assets belonging to the donor.

3. Financial Transactions

- Conduct all my financial transactions on my behalf using my funds including paying my bills, taxes and satisfying any other of my financial obligations.

4. Application for Pensions, Benefits, etc.

- Apply for and secure for me any pensions, benefits or sources of income which I have a right to receive, and deposit them into my account.

5. Banking

- Conduct all banking transactions on my behalf for accounts owned by me except as set out below.

6. Safety Deposit Boxes

- Open my safety deposit box and have access to examine, deposit, remove and replace all contents of any safety deposit box in which I have an interest.
- Maintain or cancel the contract for rental of my safety deposit box.

These paragraphs allow the attorney to deal with financial institutions; pay bills and apply for benefits.

These two paragraphs allow the attorney to deal with real and personal property.

These two paragraphs allow the attorney to settle or collect debts owing by or to the donor.

This paragraph allows the attorney to deal with such things as stocks, bonds and shares the donor may have in companies.

7. Real Estate

As my attorney sees fit:

- Take possession of and lease, sell, manage and improve my real estate.
- Mortgage or raise money on my real estate and repay the same.
- Purchase and sell mortgages, use mortgages as security for any debt, and fully or partly discharge those mortgages.
- Appoint or remove any agents to assist my attorney in the above functions.

8. Sale of Property

As my attorney sees fit:

- Sell my real and personal property in whole or in part by public auction or private contract for amounts of money my attorney finds reasonable.
- Transfer my property to a purchaser and allow the purchase price to be paid in whole or in part with the remaining balance to remain unpaid for whatever time and on whatever security as my attorney thinks proper.

9. Satisfaction of Debts

- Enter into any agreement or arrangement with any person to whom I am indebted to satisfy some or all of the debt.

10. Collection of Debts

- Demand from any person all sums of money, property and things that are owing to me presently or in the future for whatever reason.

11. Securities

- Conduct transactions in securities of any description by purchase or sale or in any other way.
- Vote and act in respect of securities and receive and grant receipts for all dividends due or which may later become due or otherwise payable to me.
- To attend and vote on my behalf at meetings of holders of securities.

12. Investment of Money

- Invest any of my money in such mortgages or securities, in a manner and at a rate of interest and on security as my attorney sees fit.
- Vary my investments in whole or in part.

13. Homesteads Act

- With respect to any matters required or permitted under *The Homesteads Act* or related amendments, Guy Martin may execute any consents, releases or other forms or documents and, on my behalf, give evidence by affidavit, statutory declaration or otherwise.

14. Substitution of Attorneys

- Substitute one or more attorneys with the same or more limited powers, and remove the substitutes.

15. Dispute Resolution

As my attorney sees fit:

- In case of a dispute with any person concerning any of the above matters, submit the dispute to mediation or arbitration.
- Settle any dispute by mediation.
- Accept and implement the decision of an arbitrator on my behalf.

16. Legal Action

- Initiate or respond to any proceeding in law or equity as my attorney sees fit.

17. Signing of Documents

- Sign all documents, assurances, deeds, covenants and things as are required and as my attorney sees fit for any of the above purposes.
- Sign and give receipts and discharges for any sums of money which my attorney receives by virtue of the powers in this document.

This paragraph indicates the kinds of investments the attorney may use.

This is the authority for the attorney to sign documents on the donor's behalf under *The Homesteads Act* (see Page 6). The consent form on Page 21 must be completed and attached to the power of attorney document.

This paragraph allows the attorney to delegate someone to act in his or her place (see Page 7).

These paragraphs guide the attorney regarding settling disagreements, and allow the attorney to take legal action.

This paragraph allows the attorney to sign documents on the donor's behalf.

General Provisions

I understand that the following general provisions apply to this Power of Attorney:

A. Accounting

I direct my attorney to provide a full accounting to Albert Clement upon his demand. The accounting shall be in a form satisfactory to Albert Clement.

B. Attorney’s Compensation

I authorize my attorney to charge fees for her services and to deduct these fees every 3 months from funds managed by her on my behalf. The fees shall be calculated on the basis of \$20 per hour and my attorney shall maintain accurate records of the time spent by her as my attorney.

C. Authority to Endure any Future Mental Incompetency

The authority of my attorney shall remain valid in the event that I become mentally incompetent in the future.

D. Former Powers of Attorney Revoked

By this document I revoke any other power of attorney or delegation of authority previously given by me to anyone except Marie Martin.

E. Power of Attorney Revocable

I understand that at any time while I remain mentally competent, I may revoke this power of attorney to Marie Martin by notifying her in writing.

F. Ratification

I direct my heirs, executors and administrators to ratify whatever my attorney does or causes to be done by virtue of this document, including whatever is done subsequent to my death or the revocation of this document, prior to my attorney or my attorney’s substitutes becoming aware of my death or revocation.

G. Number and Gender

Wherever used in this document, the word “person” includes company, corporation, partnership, firm or association. This document is to be read with all changes of number and gender as required by the context.

DATED the _____ day of _____, 20__.

WITNESS

RICHARD MARTIN

This is the paragraph that requires the attorney to account.

This paragraph allows the attorney to charge fees. It provides an example of one way to calculate fees.

This is the enduring clause.

This paragraph cancels any earlier powers of attorney signed by the donor.

This paragraph binds the estate of the donor to decisions of the attorney. It also approves actions of the attorney between the time the power of attorney ends and the attorney finds out it has ended.

THE HOMESTEADS ACT

ACKNOWLEDGEMENT BY SPOUSE OR COMMON-LAW PARTNER
FOR POWER OF ATTORNEY

I, Richard Martin, the donor named in the attached Power of Attorney appointing
Marie Martin and Guy Martin as my attorneys, acknowledge that:

1. I am executing this power of attorney freely and voluntarily without any compulsion on the part of my spouse or common-law partner.
2. I am aware of the nature and effect of this power of attorney.
3. I am executing this acknowledgement apart from my spouse or common-law partner.

Richard Martin
Name of spouse or common-law partner

Signature of spouse or common-law partner

Date

Name of witness

Signature of witness

Date

A Notary Public in and for the Province of Manitoba/
A Commissioner for Oaths in and for the Province of Manitoba
My commission expires: _____

Or other person authorized to take affidavits under
The Manitoba Evidence Act
(Specify) _____

This is the consent form giving authority for the attorney to sign documents on the donor's behalf under *The Homesteads Act* (see Page 19).

C A N A D A) I, PAUL HIEBERT
PROVINCE OF MANITOBA) of the City of Winnipeg,
TO WIT:) in the Province of Manitoba

MAKE OATH AND SAY AS FOLLOWS:

1. I am a NOTARY PUBLIC in and for the Province of Manitoba.
2. THAT I was personally present and did see RICHARD MARTIN named in the attached power of attorney, who is personally known to me, sign the power of attorney.
3. THAT the attached power of attorney was signed at the City of Winnipeg, in the Province of Manitoba on the 15th day of October, 2009 and that I am the subscribing witness to it.
4. THAT I know the said RICHARD MARTIN and he is in my belief 18 years of age or more.
5. THAT the attached power of attorney was read over to RICHARD MARTIN by me, and in my presence, and he seemed to thoroughly understand it.

SWORN before me at the City)
of Winnipeg, in the Province)
of Manitoba, this day)

of _____, 20 .) PAUL HIEBERT
)

A Commissioner for Oaths in and for
The Province of Manitoba.
My commission expires _____.

APPENDIX "B"

ACCOUNTING OF ASSETS MANAGED BY MARIE MARTIN, ATTORNEY FOR RICHARD MARTIN FOR THE PERIOD NOVEMBER 2, 2009 TO NOVEMBER 1, 2010

OPENING INVENTORY of the property of Richard Martin as of November 2, 2009

1. ASSETS

Bank accounts/cash on hand:	
TD Bank – Chequing Account	\$ 8,330.26
Stocks and Bonds:	
Canada Savings Bonds (7 x \$1,000.00) Maturing Nov. 1, 2016	\$ 7,000.00
Term Deposit:	
GIC – Matures Apr. 25, 2011	\$ 40,000.00
GIC – Matures Dec. 31, 2011	\$ 40,000.00
Other:	
Car - 2004 Dodge Neon	\$ 3,000.00
Great West Life 20 year Annuity	<u>\$ 29,000.00</u>
TOTAL:	<u>\$ 127,330.26</u>

2. LIABILITIES

<u>Liability</u>	<u>Creditor</u>	<u>Balance Owing</u>
None		

3. INCOME

<u>Source</u>	<u>Amount</u>	<u>Frequency</u>
Canada Pension Plan	\$ varies	monthly
Old Age Security	varies	monthly
Interest	varies	monthly

This is a list of assets owned by the donor when the attorney's authority began.

Debts at the beginning of authority.

Sources of income.

STATEMENT OF MONIES RECEIVED

<u>Amount</u>	<u>Date Received</u>	<u>From Whom Received</u>	<u>Explanation</u>	<u>Amt. Rec'd as Income</u>	<u>Amt. Rec'd as Capital</u>
\$ 11.25	Nov 10/09	Hydro	Credit	\$ 11.25	
244.00	Nov 19/09	Great West Life	Annuity	122.00	\$ 122.00
1,057.97	Nov 28/09	G. of Canada	OAS & CPP	1,057.97	
18.01	Nov 30/09	TD Bank	Interest	18.01	
244.00	Dec 19/09	Great West Life	Annuity	122.00	122.00
1,057.97	Dec 21/09	G. of Canada	OAS & CPP	1,057.97	
25.14	Dec 30/09	TD Bank	Interest	25.14	
3,200.00	Dec 31/09	GIC	Interest	3,200.00	
244.00	Jan 01/10	Great West Life	Annuity	122.00	122.00
1,059.43	Jan 27/10	G. of Canada	OAS & CPP	1,059.43	
76.00	Jan 27/10	G. of Canada	GST Credit	76.00	
32.31	Jan 31/10	TD Bank	Interest	32.31	
244.00	Feb 19/10	Great West Life	Annuity	122.00	122.00
1,059.43	Feb 24/10	G. of Canada	OAS & CPP	1,059.43	
36.12	Feb 28/10	TD Bank	Interest	36.12	
244.00	Mar 19/10	Great West Life	Annuity	122.00	122.00
1,059.43	Mar 29/10	G. of Canada	OAS & CPP	1,059.43	
42.32	Mar 31/10	TD Bank	Interest	42.32	
319.11	Apr 07/10	G. of Canada	Tax Refund	319.11	
76.00	Apr 12/10	G. of Canada	GST Credit	76.00	
244.00	Apr 19/10	Great West Life	Annuity	122.00	122.00
2,800.00	Apr 25/10	GIC	Interest	2,800.00	
945.13	Apr 26/10	G. of Canada	OAS & CPP	945.13	
42.92	Apr 28/10	TD Bank	Interest	42.92	
244.00	May 19/10	Great West Life	Annuity	122.00	122.00
945.13	May 30/10	G. of Canada	OAS & CPP	945.13	
30.94	May 31/10	TD Bank	Interest	30.94	
244.00	Jun 19/10	Great West Life	Annuity	122.00	122.00
945.13	Jun 28/10	G. of Canada	OAS & CPP	945.13	
27.28	Jun 30/10	TD Bank	Interest	27.28	
76.00	Jul 11/10	G. of Canada	GST Credit	76.00	
244.00	Jul 19/10	Great West Life	Annuity	122.00	122.00
953.64	Jul 27/10	G. of Canada	OAS & CPP	953.64	
25.09	Jul 31/10	TD Bank	Interest	25.09	
244.00	Aug 19/10	Great West Life	Annuity	122.00	122.00
953.64	Aug 29/10	G. of Canada	OAS & CPP	953.64	
23.39	Aug 31/10	TD Bank	Interest	23.39	
244.00	Sep 19/10	Great West Life	Annuity	122.00	122.00
953.64	Sep 27/10	G. of Canada	OAS & CPP	953.64	
21.72	Sep 29/10	TD Bank	Interest	21.72	
76.00	Oct 18/10	G. of Canada	GST Credit	76.00	
244.00	Oct 19/10	Great West Life	Annuity	122.00	122.00
958.79	Oct 27/10	G. of Canada	OAS & CPP	958.79	
22.31	Oct 31/10	TD Bank	Interest	22.31	
446.25	Nov 1/10	G. of Canada	CSB Interest	<u>446.25</u>	
		Sub-totals		\$ 20,841.49	1,464.00*
TOTAL MONIES RECEIVED:					<u>\$22,305.49</u>

*These payments reduce the capital value of the annuity during the accounting period. They are not included as receipts for purposes of the reconciliation.

This is a list of all money received by the attorney from the date authority began until the date of the accounting.

STATEMENT OF MONIES DISBURSED

<u>Amount</u>	<u>Date Disbursed</u>	<u>To Whom Disbursed</u>	<u>Explanation</u>	<u>Amount Disbursed as Income Expense</u>	<u>Amount Disbursed as Capital</u>
\$ 100.00	Nov 10/09	R. Martin	Misc. Cash	\$ 100.00	
843.20	Dec 02/09	PCH	Per Diem	843.20	
2,000.00	Dec 06/09	M. Martin	Fees (Approved Dec/4/04)	2,000.00	
500.00	Dec 06/09	M. Martin	Court Costs	500.00	
843.20	Jan 02/10	PCH	Per Diem	843.20	
33.17	Jan 03/10	TD Bank	Safety Box	33.17	
659.32	Jan 16/10	J. D. Blue	Legal Fees	659.32	
761.60	Feb 10/10	PCH	Per Diem	761.60	
843.20	Mar 03/10	PCH	Per Diem	843.20	
100.00	Mar 23/10	R. Martin	Misc. Cash	100.00	
816.00	Apr 10/10	PCH	Per Diem	816.00	
100.00	Apr 12/10	R. Martin	Misc. Cash	100.00	
1.40	Apr 28/10	TD Bank	Service Charge	1.40	
58.85	May 02/10	Accountant	Tax Return	58.85	
843.20	May 04/10	PCH	Per Diem	843.20	
1.40	May 31/10	TD Bank	Service Charge	1.40	
816.00	Jun 15/10	PCH	Per Diem	816.00	
843.20	Jul 07/10	PCH	Per Diem	843.20	
1,044.70	Aug 03/10	PCH	Per Diem	1,044.70	
1,011.00	Sep 07/10	PCH	Per Diem	1,011.00	
1,044.70	Oct 30/10	PCH	Per Diem	1,044.70	
22.00	Oct 30/10	Therapy Services	Medical Costs	22.00	
1,011.00	Nov 01/10	PCH	Per Diem	<u>1,011.00</u>	
			Sub-Total	\$14,297.14	0
TOTAL MONIES DISBURSED:					<u>\$ 14,297.14</u>

This is a list of all money paid out by the attorney during the period of the accounting.

**STATEMENT OF ASSETS SOLD OR
REALIZED AND ASSETS ACQUIRED**

<u>DATE</u>	<u>ASSET SOLD OR REALIZED</u>	<u>PROCEEDS</u>	<u>COST</u>	<u>Gain(loss)</u>
Feb 26/10	2004 Dodge Neon car	\$ 2,900.00	\$ 3,000.00	(100.00)
Nov 2/09 to Nov 1/10	Realization of capital portion of annuity (\$122.00 x 12)	\$ 1,464.00		
April 25/10	TD Bank GIC Matured	\$ 40,000.00	\$ 40,000.00	0
	TOTAL AMOUNT OF GAIN (LOSS):			<u>(100.00)</u>

ASSETS ACQUIRED

<u>DATE</u>	<u>ASSET ACQUIRED</u>	<u>COST</u>
Apr 25/10	TD Bank GIC 1 year term	\$ 40,000.00
	TOTAL COST:	<u>\$ 40,000.00</u>

This shows what assets were disposed of and acquired during the period of the accounting.

RECONCILIATION AND CLOSING INVENTORY

of the property of Richard Martin as of November 1, 2010

Reconciliation

Assets on Opening Date (November 2, 2009)	\$ 127,330.26
1. Monies received as income	20,841.49
2. Gains (losses) on realizations	(100.00)
3. Disbursements from income	<u>(14,297.14)</u>
Assets on Closing Date (November 1, 2010):	<u>\$ 133,774.61</u>

Closing Inventory

Brief Description of Asset

1. TD Bank Chequing Account	\$ 19,238.61
2. Furniture	nil
3. Personal Effects	nil
4. Term Deposits (GIC)	80,000.00
5. Canada Savings Bonds	7,000.00
6. Great West Life Annuity	<u>27,536.00</u>
Closing Date Value (November 1, 2010):	<u>\$ 133,774.61</u>

NOTE: The value of assets on closing date as indicated in the reconciliation should be the same as the total value of the estate in the closing inventory.

This is the final summary showing the assets at the end of the accounting period.

NOTES
