

CONTINUING POWERS OF ATTORNEY FOR PROPERTY AND THE BANKS

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In Ontario, when you grant someone an unconditional and unrestricted continuing power of attorney for property (“POA”), the attorney is authorized to do anything with regard to your property that you can, except make a will.¹ If you become incapable of managing your property, your attorney for property has the authority to pay your bills for you, sign cheques on your behalf and even sell your house. However, ACE has received many calls about a reluctance on the part of Canadian banks to deal with attorneys for property, creating real difficulties for attorneys² and the grantors of the power of attorney.



¹ *Substitute Decisions Act, 1992*, S.O. 1992, c. 30 (SDA); banks will also normally disallow an attorney to name beneficiaries on accounts or investments. The designation of beneficiaries is considered a testamentary disposition.

² Please note that “attorney” does not have the meaning of “lawyer” in this context, but refers to the attorney for property.

In response to this problem, the Canadian Bankers Association, which counts Canada’s five major banks among its members, has released its *Commitment on Powers of Attorney and Joint Deposit Accounts*³ (the “Commitment”). The Commitment describes five areas in which the banks will make information available about POAs to their clients using clear, simple language. These areas are outlined below:

1. **“The bank may offer its own form of POA to clients, but will not require such form to be used.”**⁴ It is important for clients to be aware that creating a new POA – including a bank POA – normally has the effect of revoking (cancelling) any prior POA.⁵ This may seriously affect estate plans previously put in place. ACE recommends seeking independent legal advice before creating any new POA.
2. **The bank will provide “(g)eneral information about bank-form POAs and POAs.”**⁶ The federal, provincial and territorial Ministries responsible for seniors have collaborated to produce a booklet called *What Every Older Canadian Should Know about Powers of*

³ The full text of the Commitments are available at: <http://www.cba.ca/contents/files/misc/vol-poa-joint-account-en.pdf>

⁴ Canadian Bankers Association “Voluntary Commitments and Codes of Conduct: Commitment on Powers of Attorney and Joint Deposit Accounts”, online: Canadian Bankers Association www.cba.ca.

⁵ SDA, *supra*, note 1, s. 12(1)(d)

⁶ Canadian Bankers Association, *supra*, note 4

*Attorney (for Financial Matters and Property) and Joint Bank Accounts.*⁷ The banks may satisfy this Commitment by providing a copy of the booklet to their clients. Alternatively, the bank may provide its own publication as long as it includes the same material.

3. **The bank will provide its “minimum requirements for an account to operate under the authority of a POA.”**⁸ This may include presenting either the original POA document, or a notarial copy of the POA, to the bank along with valid ID. A notarial copy is one that has been certified by a lawyer to be a true copy of the original document. At times, banks will request a notarial copy as an alternative to their keeping the original. This is usually done as a convenience to the attorney, who may need to present the original document at more than one place.

4. **“If a POA or attorney’s instructions require further review when presented to the bank, except where the review is related to potential financial abuse or other illegal activity, the bank will inform the client or attorney that a review is required and provide a general timeline for the review and that certain reviews may require more time.”**⁹ Where the review is related to suspected financial abuse, the bank may choose not to advise you of the review, and/or may be prohibited by law from doing so.

It should be noted that banks are more likely to scrutinize "do-it-yourself" POA kits, including kits provided by the Public

Guardian and Trustee, than POAs drawn up by a lawyer. A bank may seek assurances from the lawyer who drew up the POA that it is valid. However, a lawyer can only attest to the document’s validity at the time that it was executed (signed): the grantor of the POA may have since revoked it, or caused it to be revoked by creating a new POA, without the lawyer’s knowledge.

5. **The bank will advise regarding “(t)he recourse available to clients or attorneys where a bank refuses to act on a POA or attorney instructions.”**¹⁰

ACE recommends taking the following steps in the face of such a refusal:

First, contact your bank’s Office of the Ombudsman. All five major banks in Canada have an Ombudsman’s office in place. The Ombudsman’s office is expected to be an impartial service designed to resolve conflicts between a bank and its clients.

If the issue cannot be resolved by your bank’s Ombudsman, contact the Ombudsman for Banking Services and Investments (“OBSI”) at www.obsi.ca. Please confirm that your bank participates in the program by checking the OBSI website. It is important to note the OBSI will not look into complaints that have not first been reviewed by your bank’s own Ombudsman. The OBSI offers an alternative dispute resolution process, and while its recommendations are not binding, they are very often accepted by banks and clients.

In the event that neither of these avenues proves fruitful, consider consulting a lawyer for advice on other ways of resolving your dispute.

⁷ This title may be found online at: <http://www.seniors.gc.ca/eng/working/fptf/financial.shtml>

⁸ Canadian Bankers Association, *supra*, note 4.

⁹ *Ibid.*

¹⁰ *Ibid.*