



SECTION 1.

Planning for a Safe and Secure Future

Planning ahead can bring peace
of mind to you and your family

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There are several legal tools that you can use to help you plan for your future financial and personal well-being. Although these tools do not guarantee that you will not be abused, they can help you to plan ahead for a time when you may become incapable of handling your own affairs.

Whether this happens because of illness, accident, dementia or advanced age, planning ahead can give you peace of mind. It may be reassuring to know that if you are unable to make decisions, the people you most trust will handle your financial matters and make personal care decisions in your best interest. Family members may also find it less stressful to

know that they are following your wishes, rather than trying to figure out what you would have wanted.



The tables in this section give an overview of some legal tools and set out the advantages of having them. Later, **Section 2: Preventing Financial Exploitation**, will cover some of the possible abuses of these legal tools and the measures you can put in place to help prevent abuse. Be sure to share any concerns about abuse with your lawyer who can give you suggestions for how to protect yourself.

For more detailed information, see the booklets ***Powers of Attorney*** and ***When You Can't Manage Your Affairs – Who Will?***, included in the Toolkit.

A. Assistance in Handling Your Financial Matters

In New Brunswick a competent adult may create a Power of Attorney for financial and property matters and/or for personal care. Typically this is done by a lawyer. The person you name to act on your behalf in your POA is called the “attorney” or the “donee”. For more information on how to set up a POA, who you can name as your attorney, what you can include in your POA, and how to end a POA, see the booklet **Powers of Attorney** in the Toolkit.

Let’s explore some advantages of using a POA to help you plan for a safe and secure future.

Power of Attorney for Financial Matters

A POA for financial matters is created under the *Property Act*. It lets you give one or more persons you trust the authority to handle your financial and property matters. This could be for a short term, for a specific purpose. Or it might be in anticipation of a time when you become unable to handle your own financial affairs.

Advantages

- You can choose the person you wish to take care of financial matters on your behalf when you are unable. This is often a trusted family member or friend.
- You can plan ahead so that if you become ill, frail or otherwise unable to act for yourself the person you trust will be legally handling your affairs.
- You can create your document as an “**enduring**” POA. This means that if you do become incompetent, the POA would continue and there would be no need for an assessment of your mental capacity.

B. Assistance in Making Health and Personal Care Decisions

Power of Attorney for Personal Care

Advantages

This type of POA is created under the *Infirm Persons Act*. It lets you decide who you want to make decisions on things like going to a nursing home, health care treatments and end of life care. The person you name as your attorney will have the authority to make your personal and health care decisions when you are unable to do so.

- You can choose one or more people who understands your preferences and whom you trust to make your personal care decisions as you might have done.
- You may have peace of mind knowing that you will continue to receive proper care if you become incompetent.
- Saves your family undue emotional hardship (avoids delay, inconvenience and costs of having to go to court to become your guardian.)

TIP

You can have a **single** Power of Attorney that deals with both financial and personal care matters. Or, you can have **two** separate Powers of Attorney to deal with financial/ property matters and personal care decisions.

C. Tools for Distributing Your Property after Your Death

It's a good idea to have a will. Although you don't have to make one, a will is the best way to be sure the things you own end up in the hands of the people that you want to have them. If you die without a will somebody, usually a family member, would have to apply to the court and request that they be appointed as the administrator of your estate. They would have to distribute your property in fixed shares among the people that the law regards as your closest relatives (according to the *Devolution of Estates Act*). That may not be how you would like to distribute your belongings. This may cause stress and friction among family members who may have thought you intended to leave something to them. See ***Dying Without a Will*** in the toolkit.

Make a Will

A will is a legal document in which you name the people or organizations you wish to give your possessions and property to after you die. A lawyer can explain your options for distributing your property under your will.

See the pamphlets in your Toolkit ***Choosing an Executor, Being an Executor*** and ***Making a Will***.

Advantages

- Lets you distribute your property as you wish rather than the way the law says it should be divided if you die without a will.
- Lets you choose your own executor rather than having the court appoint someone.
- Gives you flexibility in carrying out your wishes.
- Avoids delays and costs – your family will not have to spend time and money applying to the court.

TIP

If you wish to benefit a common-law partner, you should name that person in your will. If you die without a will, they are not entitled to property under the law. However, others whom you may not wish to get your property may be entitled.

D. Options When You Have No One to Appoint

Ask the Public Trustee to Act

The Public Trustee of New Brunswick protects the financial and personal interests of various persons, when there is no one else able and willing to do so. This may include being appointed to handle their financial matters, act as a legal guardian (committee of the estate/person), administer the estate, and so on.

There is a fee for public trustee services that is based on the client's ability to pay.

Advantages

- If a person has no family members or friends who are able to apply to be appointed as a Committee, a Public Trustee may be appointed. Public Trustee services are administered by the New Brunswick Legal Aid Services Commission.
- The Public Trustee may act as a Committee of the Estate and/or Person to make decisions about finances or property and/or to make decisions about personal care. Any individual can make a referral in writing to the Public Trustee by completing the application for the services required.

TIP

For more information about the Public Trustee, go to the New Brunswick Legal Aid Services Commission website at www.legalaid.nb.ca.

Consequences of not legally appointing someone to act on your behalf.

If you do become incompetent, someone must apply to the Court to become your **Committee of the Estate and/or Person**. You should know the following:

Committee of the Estate and or Person

Sometimes it is necessary for a court to declare a person mentally incompetent or infirm and appoint another person or group of people to make decisions on his or her behalf. In some cases, a relative or friend may apply to the court to appoint them as the guardian of the mentally incompetent person. In New Brunswick this process is governed by the *Infirm Persons Act*.

If you have not planned ahead, and there is no family member able to apply to the court, a **Public Trustee** may be appointed.

Reasons to Avoid

- This process is often emotionally difficult and time consuming, not to mention expensive. In this situation, you would be required to have a mental competency assessment which can cause confusion, embarrassment and negative stereotypes.
- Having someone challenge your mental competency may also feel as though they are challenging your independence and dignity.

TIP

If you plan ahead, you should be able to avoid placing someone in the position of having to take legal action in the courts to become responsible for your financial and personal well-being. For more information see the booklets called ***When You Can't Manage Your Affairs – Who Will?*** and ***Mental Competence***.

E. Other Legal Tools

Set up Shared Ownership

You should talk to a lawyer for advice on some of the ways that you might handle your financial matters outside of a will.

For example, people can share ownership in bank accounts, stocks, bonds, real estate and motor vehicles.

Advantages

- This allows you and another person to use these items such as a bank account.
- You should check with a lawyer to be sure you set this up the way you intend.
- Do you want the person you have joint ownership with to own the property/money when you pass away, or do you want it to become part of the estate to be divided among other beneficiaries? Your lawyer can advise you how to proceed so that your wishes are followed.

Create a Life Tenancy with Someone You Trust

You can transfer (give or sell) your property to another person such as a family member, on the condition that you are allowed to live there as long as you want.

Advantages

- You can create life tenancies with anyone you trust.
- You can specify in a life tenancy who has to take care of the property and pay the bills.
- Your interest in the property lasts for your lifetime.

F. Thinking About Your Funeral Plans

A Pre-arranged Funeral Service Plan

You can contract with a licensed funeral home to provide you with a plan for funeral services after you die. Be sure that you get a copy of the signed standard form of pre-arranged funeral plan. Rather than putting funeral plans in a will, which may not be read until after the funeral, give your executor a copy of your plan when you make it.

Advantages

- You can plan your funeral while you are living.
- You can pay a lump sum in advance or installments.
- You will save your family or your executor from having to decide your funeral arrangements and pay for them.
- You may have peace of mind knowing your family will not have to deal with these decisions at the time of your death.

TIP

It is possible to purchase insurance to help cover the costs of your funeral. It is important to understand the difference. This does not mean your funeral is pre-planned. Without making arrangements at the funeral home you haven't bought a funeral service, you have only purchased insurance to help cover the costs.

Your Pre-arranged Funeral Service Contract

By law, all contract for pre-arranged funeral services must include:

- A detailed description of the goods and services covered by the plan.
- A detailed description of the goods and services not covered by the plan.
- The place where the funeral services are to be performed.
- Other information relating to termination of the plan and payment schedules

If you wish to make additions to the contract, they must not conflict with the rights or duties set out in the *Pre-arranged Funeral Services Act*. It is a good idea to seek legal advice before making any changes. For more information, visit the Financial and Consumer Services Commission website at: www.fcnb.ca/pre-arranged-funeral.html.