

RBC Royal Trust

Your reference guide for acting as an attorney under a power of attorney



Wealth
Management

RBC Royal Trust

A century of trust

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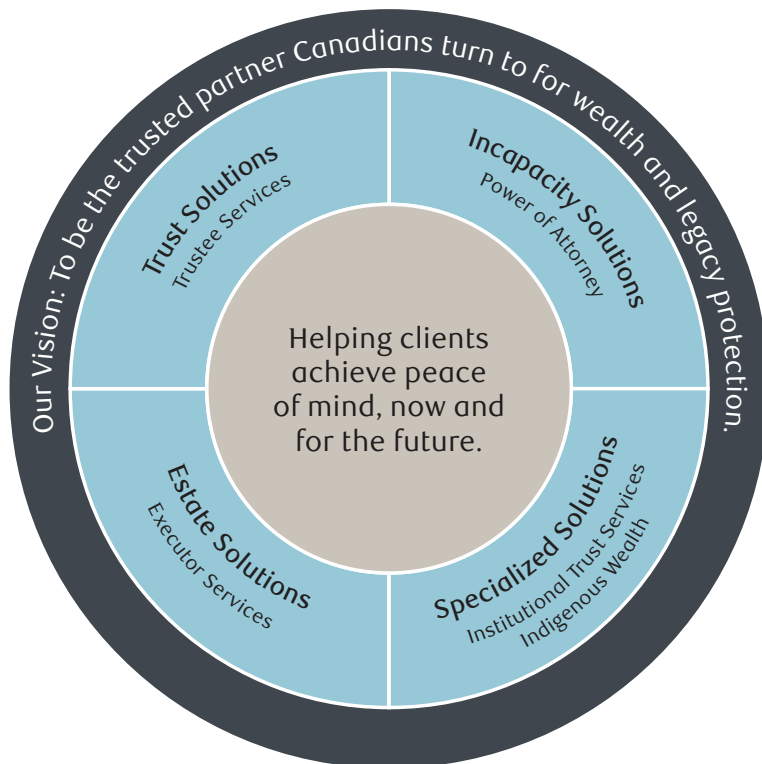
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RBC Royal Trust® has been serving Canadians since 1899. We provide individuals, families and businesses with valuable estate, trust and incapacity solutions tailored to their specific needs. Our clients are often dealing with unique and complex issues, and want a personal relationship with a skilled advisor who can deliver tailored, thoughtful solutions.

Our RBC Royal Trust team comprises specialized and experienced professionals including legal counsel, accountants and other specialists with years of estate and trust experience. We are an exceptionally strong professional trust services firm, supported by the strength, stability and resources of RBC®, one of Canada's largest banks.

What we offer our clients

- Guidance through life events and times of transition with expertise, empathy and efficiency
- Compassion and understanding of the family's experience
- Peace of mind knowing that there is stability and continuity in the long-term relationship with beneficiaries
- Assistance in the preservation, management and transfer of wealth from one generation to another by providing solutions to implement clients' estate and trust plans
- Financial security to Canadians who require assistance in the management of their affairs as they grow older



For more information, speak with an RBC advisor, call us at 1-855-833-6511 or visit our website at rbc.com/royaltrust.

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Introduction

Acting as an attorney* (under a power of attorney for property) is a tremendous responsibility and one that should not be given—or taken on—without careful consideration. If you have been appointed as an attorney, you are required to act exclusively for the benefit of the individual who appointed you. This is a complicated undertaking—one that can seem especially overwhelming if you are also caring for a loved one.

In fact, attorneys can face responsibilities that demand a great deal of time, energy and attention to detail. This, coupled with governments' increased interest in regulating an attorney's activities, has resulted in more complex tasks for attorneys. If you have been appointed as an attorney for property and financial affairs, RBC Royal Trust can offer you a variety of administrative services to assist you with as many of your attorney duties as you require.

This brochure provides you with information on the duties of an **attorney appointed under a power of attorney for property**** and how you can get help with those duties. It's intended as an information resource to support you with your attorney duties, not as a substitute for professional advice. At the end of this brochure, we have included a checklist for your reference that summarizes the range of tasks that you may need to get involved in.

* In most jurisdictions across Canada, the person who sets up the power of attorney is known as the "donor" and the individual chosen to act on the donor's behalf is called the "attorney."

** Throughout this brochure, we will be using the terms "power of attorney for property" and "power of attorney for personal/health care." Depending on the province/territory, the term used to describe a power of attorney document for property that can be used during the donor's incapacity may vary. Some provinces/territories may refer to it as a "continuing" or "enduring" power of attorney. In Quebec, it is referred to as a "mandate in case of incapacity." Please check with your jurisdiction's legislation for the appropriate term.

This brochure will focus on a power of attorney for property only. For information or questions related to a power of attorney for personal/health care, please contact your legal counsel.

What is a power of attorney?

A power of attorney is a legal document in which one person gives another person(s) or trust company the authority to act on their behalf. In most jurisdictions across Canada, the person who sets up the power of attorney is known as the “donor,” and the individual chosen to act on the donor’s behalf is called the “attorney.” For both the attorney and the donor, it is crucial to understand exactly what their role entails and what is required under the law.

Anyone of legal age and capacity can establish a power of attorney, regardless of the value of assets to be managed. Despite the name, an attorney does not need to be a lawyer or other legal professional; an attorney can be almost any individual (subject to certain restrictions) or a professional such as a trust company. In many cases, the attorney may also be the same person named as executor of the donor’s estate.

Power of attorney for property

This type of power of attorney appoints a person(s) or trust company to make decisions about property, finances, assets and investments on the donor’s behalf.

An “enduring” or “continuing” power of attorney empowers the attorney to legally make decisions about the donor’s property and finances on their behalf, and that authority continues in the event that the

donor becomes incapable of making these decisions themselves. It is valid as soon as it is signed, but may provide that the attorney’s authority to act only start when the donor is somehow incapacitated.

A power of attorney can be limited in scope; for example:

- it may only come into effect upon some future event (such as mental incapacity);
- it may be valid for a specified period of time (for example, while the donor needs to be out of the country); or
- it may pertain to a specific account at a specific financial institution, which may or may not survive incapacity.

Power of attorney of personal/health care*

This type of power of attorney appoints a person(s) to make personal and health care decisions on the donor’s behalf. It may also instruct doctors and other caregivers as to the kind of personal or medical care the donor may want, or does not want, should they ever become incapable of making those decisions.

In some provinces/territories, the power of attorney for property and the power of attorney for personal/health care are separate legal documents, and they may or may not appoint the same person as attorney.

* This brochure will focus on a power of attorney for property only.

What does it mean to be an attorney?

Your overall responsibility as an attorney is to act honestly, in good faith and in the best interests of the donor.

The scope of power and restrictions you have are contained in the document itself and applicable provincial legislation. Before assuming your responsibilities as attorney, you should confirm whether you are the only named attorney or if others have also been named. If there are other named attorneys, the power of attorney document will also outline whether you may act “jointly and severally” (i.e., make binding decisions independent of each other) or whether all attorneys must approve each action taken “jointly” on the donor’s behalf.

It’s also a good idea to determine whether the donor created any power of attorney documents at their financial institution(s) related to the assets held in those institutions. If another person is named as attorney over those specific assets, they may retain that authority unless otherwise stated in your power of attorney document.

Typical duties of an attorney

Depending on your province or territory of residence, the responsibilities of an attorney may include:

- Consulting and communicating with the donor as well as the donor’s family
- Managing and safeguarding the assets
- Keeping detailed records of all transactions involving the donor’s property, and ensuring tax returns are filed
- Working with the attorney for personal/health care to ensure the donor has the necessary financial resources*
- Making expenditures on the donor’s behalf for their support and care, and for the support and care of any of their dependants

* There may be additional criteria set out by each province/territory for the termination of an attorney’s authority.



Compensation

As attorney, you may be entitled to receive financial compensation. The fee may be stipulated in the power of attorney document, but if no mention is made, look to your provincial laws for guidelines. At a minimum, you are entitled to reimbursement of any reasonable expenses incurred while carrying out your duties. Any compensation you receive, with the exception of reimbursement for direct expenses, is taxable as income.

Termination

If you alone are appointed as an attorney, your authority as an attorney is typically considered to end when any of the following occur:

- The donor, if mentally capable, revokes your power of attorney
- The donor passes away
- The court appoints a guardian of, or committee for, the donor
- You become incapable of fulfilling your duties as attorney
- You resign as attorney
- You pass away

Things to consider

Many people feel overwhelmed by the thought of being responsible for managing the financial affairs of a loved one. There are also other circumstances where the services of a professional, such as a trust company, can provide valuable support, including:

Complex family dynamics—Acting as an attorney can often create family conflict or renew existing family discord. An attorney may feel pressure from other family members or friends to act in a way that may not be consistent with what the donor would have wanted. As attorney, you need to communicate openly with the donor and the donor's family and balance potentially conflicting interests. An unbiased third party can often be an invaluable resource in managing those tensions.

Time constraints—Many attorneys are unaware of how much time managing someone else's finances requires. In some cases, an attorney's tasks span several years, and the level of care needed may escalate over time. People with busy lives and competing time pressures of children, a career and caring for aging parents are often challenged to carry out their attorney duties in a timely manner.

Lack of expertise—As attorney, you might feel that you lack the professional skills needed to handle some of the more technical aspects of the job such as recordkeeping, managing investments and ensuring tax returns are filed. A professional, such as a trust company, can carry out many of the duties you don't feel comfortable handling yourself, while you retain your decision-making authority.

Living outside the province or country—It is challenging to act as an attorney from a distance. If you live in a different jurisdiction than the donor, there may be additional risks due to the legal, logistical and administrative complexities in managing the donor's affairs from afar. You may also be impacted personally or professionally, particularly if you are also providing or arranging personal health care for the donor.

Personal liability—As attorney, you can be held personally liable by the donor or the executor of the donor's estate if any of your actions as attorney come into question or are inadequately documented. This, coupled with governments' increased interest in regulating an attorney's activities, may require attorneys to demonstrate that they are fulfilling their duties, with potential legal consequences if they cannot demonstrate this.

If you have questions about your attorney duties, speak with an RBC advisor, call us at **1-855-833-6511** or visit our website at [rbc.com/royaltrust](https://www.rbc.com/royaltrust).

RBC Royal Trust can help



Caring for a loved one is difficult enough without the added demands of being named attorney. If you have agreed to be an attorney and are feeling overwhelmed by the duties involved, are unsure how to proceed or simply lack the time and expertise required to carry out your duties, we are here to help.

Our services

Having an experienced professional at your side can provide welcome assistance during a difficult and challenging time. An RBC Royal Trust professional can help you assess the tasks and responsibilities that you face and offer a customized level of support. You can choose which tasks you need help with including (but not limited to):

- Handling the ongoing administration of the donor's assets, such as bill payments, income collection and property management
- Consolidating the donor's accounts and assets to ensure the safekeeping of assets, the simplification of management and the reduction of fees
- Maintaining records of all transactions related to the ongoing administration, and providing court accounting statements
- Reviewing the existing investment portfolio to ensure that it is in alignment with the donor's needs


- Managing the donor's portfolio to ensure that their investments are looked after with the degree of care, skill and diligence required
- Arranging for the sale of real property and the disposition and/or safeguarding of household goods and personal effects
- Preparing the donor's tax returns and making any necessary payments

Throughout the process, you will receive attentive, reliable expertise and regular communication on everything you need to help you carry out your specific attorney duties.

Our RBC Royal Trust professionals are skilled in the intricacies of power of attorney administration from both an emotional and technical perspective. We are sensitive to the complexities of your unique family dynamics and approach each situation with compassion and professionalism to make the process as easy on you as possible.

How much will it cost?

Recognizing that every situation is unique, we offer personalized and customizable support so that you pay only for the services you choose. In addition, using RBC Royal Trust may ultimately save money for the donor because of the skill and experience your RBC Royal Trust advisor provides.



The value of having a partner look after all of the details

Mike is 47 years old and is married with two children. He is a sales manager with a manufacturing company and is required to travel frequently. He is also heavily involved in volunteer activities within his community and coaches his son's hockey team.

Mike's father, John, who is a widower, recently suffered a sudden stroke and no longer has the capacity to make his own financial and personal care decisions. John's power of attorney document for his property and personal care appointed Mike as his attorney. In addition to making decisions regarding his father's medical care, Mike also had to assume the responsibility of looking after his father's financial affairs.

Mike struggled to keep up with the demands on his time and received late payment notices for unpaid bills pertaining to the family home. In addition, Mike was also advised that he would need to make alternate care arrangements for his father who was no longer able to live in the family home independently.

Much to Mike's surprise, his father had been dealing with multiple financial institutions, held share certificates in a safety deposit box and had several uncashed dividend cheques. Mike realized that he needed some assistance in order to simplify the management of his father's finances.

A close friend recommended that Mike meet with an RBC Royal Trust advisor who had helped her when she was going through a similar situation. After meeting with the advisor, Mike hired RBC Royal Trust to:

- Prepare a complete inventory of his father's assets along with a cash flow statement, which would be updated annually
- Consolidate his father's assets in one account
- Arrange for his father's employment and government pensions to be automatically deposited into the account
- Redirect all his father's bills to RBC Royal Trust for payment
- Assist with the sale of the family home
- Prepare and file his father's annual tax return including payment of his quarterly tax instalments
- Arrange for the management of his father's investible assets
- Provide quarterly accounting statements

Mike was very pleased with the compassion, professionalism and expertise of the RBC team. He no longer had to worry about his father's financial affairs and could focus on spending more quality time with his father and the rest of his family.



Welcomed support given complex family dynamics

Linda, a widow and mother of five children, began to experience common symptoms of Alzheimer's disease. She was becoming increasingly forgetful, had difficulty communicating and exhibited frequent changes in mood and behaviour. Unfortunately Linda had become incapable of making her own financial and personal decisions.

Linda had established a power of attorney several years back and had named her youngest daughter, Michelle, as attorney for her property and financial affairs. This responsibility only added to the difficult and complex relationship that Michelle had with her four siblings, all of whom were also beneficiaries of Linda's estate. While everyone agreed that Linda should be placed into a private nursing care home, there was disagreement as to how her long-term care should be financed. One of Michelle's brothers strongly believed that Linda's care should be financed from the sale of her \$500,000 home. Michelle's sister was reluctant to sell the home as she had hoped to inherit it in Linda's Will and argued that Linda's care should be financed with the income from her investment portfolio. Family arguments became quite heated, and Michelle became increasingly overwhelmed about making the right decisions for her mother.

Michelle contacted an RBC Royal Trust advisor to provide the analysis needed to help her make a decision, and to also serve as an unbiased third party in dealing with her family. An RBC Royal Trust advisor met with Michelle to discuss all the various services available. Michelle hired RBC Royal Trust to consolidate all of Linda's assets and prepare an income and expense statement. The analysis indicated that Linda faced a \$40,000 per year cash flow shortfall. If the children did not make a decision about selling the home soon, her investment portfolio would likely be depleted within 5 to 10 years, assuming there would be no unexpected expenses or increases in her personal care costs. Based on the presentation to the family, Michelle and her siblings agreed that selling the home soon was the best option for financing their mother's personal care.

Michelle was grateful to RBC Royal Trust for providing the necessary analysis to help them make the best decision for their mother and limit the family conflict.

Typical duties of an attorney for property

The specific functions that an attorney performs will vary according to the personal needs of the individual donor and the assets to be managed. The scope of the power given to the attorney and any restrictions on the attorney are contained in the document itself and applicable provincial legislation.

The following describes some of the general duties that an attorney would ordinarily be expected to carry out, but may not be a complete list of all the duties required of an attorney.

Always act in the best interests of the donor

When making decisions, you must first consider the well-being of the donor. You should also attempt to help the donor maintain as much independence as possible. That means involving the donor in decisions wherever feasible, and making sure that those decisions reflect what the donor would want. For example, if a donor wanted to continue living at home but required 24-hour care to do so, the request should be respected unless the donor's funds could not support it.

Fulfil the duties with prudence, diligence and integrity

In the absence of authority to do so, at no time should you ever borrow money from the donor, even if you are a named beneficiary in

the donor's Will. Unless given very specific powers by the donor in the appointment document, it is not appropriate for attorneys to place themselves in any conflict of interest where they may be placing their own interests above those of the donor. This includes allowing attorneys to take any unauthorized profit or property from the donor. The donor's money and property should be kept completely separate from your own.

Note: As attorney, you do not assume personal ownership of any of the donor's assets, nor are you personally responsible for any of the donor's debts unless you are a co-debtor or guarantor.

Communicate openly with the donor as well as the donor's family

Once you begin (ideally, before you begin) acting as attorney, you and the donor should discuss your duties as attorney to ensure there's a mutual understanding of your role and the donor's expectations. It's also important (provided the power of attorney document and/or applicable legislation gives you the requisite authority) for you to consult with the donor's close family members and caregivers regarding your ongoing work as attorney. Equally important is helping the donor to maintain contact with supportive family and friends.



Locate the Will

It's a good idea to locate a copy of the donor's Will, if one exists. This is for the purpose of preserving any property that the donor may have bequeathed. Such properties should be protected from sale unless absolutely necessary to meet the donor's needs.

Keep meticulous records

Maintaining detailed records may be a tedious part of your role as attorney, but it is vital that you keep detailed records of all the transactions and decisions you make on the donor's behalf. Avoid outlays of cash that cannot be confirmed by receipts. It is important not to commingle the assets or cash of the donor with your own in order to clearly facilitate the accounting. You may be asked to provide an accounting at a later date, which would entail showing all of the assets owned by the donor, any changes to that ownership and all transactions of funds or assets flowing into, and out of, the donor's accounts.

Generally, the records you are required to maintain for a power of attorney for property include:

- A copy of the power of attorney document
- Copies of any management plans or court orders related to the power of attorney

- A list of the donor's assets as of the date you took over their management including real property, money, securities, investments, motor vehicles and other personal property
- A list of the donor's liabilities as of the date of your first action as attorney
- Ongoing lists detailing assets acquired and disposed of, money received and paid out, investments made, and liabilities incurred and discharged on the donor's behalf; all with notes documenting the date of, reason for and parties involved in the transaction
- An ongoing list of all compensation taken by the attorney, if any, with detailed notes
- A list of the assets (and values) used to calculate the attorney's management fee

Safeguard assets

This includes taking an inventory of all of the donor's assets, and taking steps to secure them. It also includes contacting any financial institutions to ensure you begin to receive copies of statements for any bank or investment accounts, and confirming that current and adequate insurance is in place for physical assets including real estate, automobiles and personal effects.

The specific duties and obligations applicable to your own power of attorney will of course be unique, and you should, in all cases, seek competent legal advice.

Expenditures

As attorney, you may be responsible for making expenditures on the donor's behalf for their support and care and for any of their dependants. You should check your jurisdiction's laws to determine whether there are any rules about making required and optional expenditures on behalf of the donor, and the order in which they may be paid. If you are unsure about whether you can make certain expenditures, you should consult your legal advisor for assistance to make sure that you are complying with the relevant jurisdiction's rules.

Financing personal/health care

If you are only appointed as the donor's attorney for property, you will need to work together closely with the person(s) appointed as the attorney for personal/health care to ensure the donor's best interests are met. For example, the attorney for personal/health care is responsible for making decisions about the donor's health care, shelter, clothing, hygiene and safety. If the donor is incapable and the attorney for personal/health care makes a decision to have the donor's care provided in a long-term care facility, you will be called upon to ensure the donor has the financial resources to pay for the long-term care facility.

Review investments and meet with a financial advisor

You are responsible for the proper management of the donor's investments. It is therefore prudent to meet with a qualified financial advisor to review the donor's current portfolio and ensure that it is structured appropriately to meet the donor's current and future needs. Once you are satisfied with the portfolio, you should review it frequently to monitor it for any necessary adjustments.

Safeguarding records

All records you keep related to your attorney duties are to be considered confidential. Unless the donor has specifically requested that you share information with someone else, you should share them only with the donor, any other named attorneys for either property or personal/health care, or the executor of the donor's estate upon the donor's death.

You must maintain all records until your appointment as attorney is terminated and you either pass on the records or destroy them as required or permitted by law.





Attorney for property duties checklist



Ce document est aussi disponible en Français.
This document is also available in French.

The following checklist summarizes the range of tasks that may be involved in assuming attorney* duties (under a power of attorney) for a donor. The extent to which these duties should be performed by the attorney will depend on the circumstances of the donor, and as such, not all may be applicable. If the donor is capable, the attorney should follow the instructions of the donor as to which tasks should be completed on their behalf.

If you have questions about any of the duties listed or want more information about how you can get help from an RBC Royal Trust professional, please call 1-855-833-6511.

Task
Preliminary steps
<input type="checkbox"/> Obtain a copy of the power of attorney document(s)
<input type="checkbox"/> Verify that the power of attorney document(s) is the most recent one signed by the donor
<input type="checkbox"/> Ensure that any and all preconditions for acting as the attorney have been met
<input type="checkbox"/> Confirm if others have been named to act as attorney and in what capacity
<input type="checkbox"/> Consult with the person acting as attorney for personal/health care regarding the health care, safety and shelter of the donor
<input type="checkbox"/> Confirm that the power of attorney authorizes acting in respect of all or only some of the donor's property/assets, and whether there are any other restrictions that apply (e.g., the power of attorney can only be used during a specified period of time)
<input type="checkbox"/> Obtain copies of any management plans or court orders related to the power of attorney
<input type="checkbox"/> Locate and review the donor's Will to confirm if there are instructions or gifts of personal or real property
<input type="checkbox"/> Discuss the power of attorney document, and duties and authority as attorney, with the donor (if possible)
<input type="checkbox"/> Review the donor's personal records and contacts, and establish a system for ensuring the organization and protection of this information and actions
<input type="checkbox"/> If there is no named attorney for personal/health care, obtain legal advice regarding the donor's current circumstances
<input type="checkbox"/> Notify personal attendants, housekeepers, gardeners and other staff of your role as attorney, and advise as required
<input type="checkbox"/> Establish relationships with the close family, friends and other key caregivers of the donor
Initial tasks
<input type="checkbox"/> Create a complete list of the donor's assets and liabilities/debts including any digital assets such as social media accounts as of the date of your first action
<input type="checkbox"/> Locate all original investment certificates, stocks, bonds, property deeds, etc.
<input type="checkbox"/> Identify and document all other personal assets
<input type="checkbox"/> Check the Bank of Canada website for unclaimed balances in the donor's name
Safeguard assets
<input type="checkbox"/> Notify all banks, brokers and financial institutions the donor has business with that you are acting as the donor's attorney; confirm whether the donor created any other power of attorney documents with them, and redirect statements if necessary
<input type="checkbox"/> Review the suitability of the donor's investment portfolio and any surplus cash, making any necessary and allowable adjustments to meet the donor's current and future needs; monitor the investment portfolio on a regular basis

Task
Safeguard assets (continued)
<input type="checkbox"/> Notify appropriate institutions and redirect annuities, pensions and registered funds as required
<input type="checkbox"/> Notify the appropriate authorities and redirect all sources of income including CPP/QPP, OAS, Veteran's Pension Payments and GST/HST credits
<input type="checkbox"/> Apply for any pensions or other payments to which the donor may be entitled
<input type="checkbox"/> Notify insurance companies or other institutions regarding auto, home, disability or life insurance that we are acting as the donor's attorney, and redirect statements if necessary
<input type="checkbox"/> Ensure adequate insurance for the assets and management of any real property
<input type="checkbox"/> Cancel auto registration and insurance, if applicable, and collect any refunds
<input type="checkbox"/> Cancel the donor's debit and credit card(s), if applicable
<input type="checkbox"/> Cancel memberships and other subscriptions if required
Prioritize expenditures
<input type="checkbox"/> Create a monthly budget consisting of all income expected and payments required to ensure the donor's immediate and ongoing financial needs can be met
<input type="checkbox"/> Pay all expenses as required
Taxes
<input type="checkbox"/> Notify Canada Revenue Agency, provide them with a copy of the power of attorney document and request a statement of account showing all outstanding taxes, refunds and instalments paid up to the current date
<input type="checkbox"/> File any outstanding and ongoing tax returns and pay all income taxes owing
<input type="checkbox"/> Collect tax slips, medical and donation receipts as required
<input type="checkbox"/> Determine whether the donor is subject to any foreign tax jurisdictions (e.g., if the donor is a U.S. citizen) and determine how to address the situation (seek tax and legal advice as necessary)
Keep meticulous records
<input type="checkbox"/> Establish an ongoing list of acquisitions and dispositions made on the donor's behalf (e.g., money received, investments made, liabilities incurred or discharged), obtaining and retaining receipts for all transactions
<input type="checkbox"/> Investigate and record all debts owed by the donor
<input type="checkbox"/> Document any compensation (including assets used in calculation) taken for attorney duties

* In most jurisdictions across Canada, the person who sets up the power of attorney is known as the "donor" and the individual chosen to act on the donor's behalf is called the "attorney."

We have used the terms "power of attorney for property" and "power of attorney for personal/health care." Depending on the province/territory, the term used to describe a power of attorney document for property that can be used during the donor's incapacity may vary. Some provinces/territories may refer to it as a "continuing" or "enduring" power of attorney. In Quebec, it is referred to as a "protection mandate." Please check with your jurisdiction's legislation for the appropriate term.

For information or questions related to powers of attorney for personal/health care, please contact your legal counsel.

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- › Speak with an RBC advisor
- › Call 1-855-833-6511
- › Visit our website at [rbc.com/royaltrust](https://www.rbc.com/royaltrust)



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