

POWER OF ATTORNEY

Mandatory's obligations

The mandatory must

- execute the power of attorney with care,
- act with honesty and loyalty, and avoid any conflict of interest,
- keep the mandator informed about the actions taken, on request or as the circumstances require, and
- notify the mandator as soon as the task has been accomplished, and hand over any money or documents received on the mandator's behalf.

The mandatory must perform the power of attorney personally, unless the mandator has given authorization to seek assistance. In unforeseen circumstances, however, the mandatory may be forced to get help and delegate duties, in which case the mandatory is responsible for the actions of any person providing assistance. If the mandator has specifically stated that the mandatory may seek assistance, the mandatory is responsible only for the care used in selecting a substitute and giving instructions. In all cases, the mandator can sue the person chosen by the mandatory as a substitute.

Termination of the power of attorney

The power of attorney is terminated when

- both parties have fulfilled their obligations,
- it has become impossible to perform the obligations,
- the mandator revokes the power of attorney,
- the mandatory withdraws from the power of attorney, or
- the mandatory or mandator dies, becomes bankrupt or is declared incapable by being placed under protection supervision.

For more information

The information summarized in this document was valid at the time of printing. For more information, go to the website of the Ministère de la Justice at www.justice.gouv.qc.ca, or contact

Ministère de la Justice

Phone: 418 643-5140

Toll-free: 1 866 536-5140

E-mail: informations@justice.gouv.qc.ca



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There are many different situations in which you need to give a professional, or another person, responsibility for carrying out a particular action on your behalf using a power of attorney. For example, you could be leaving on vacation and not have time to sell your car or sign the lease for a new apartment.

A power of attorney is used in the administration of property. For example, it can authorize another person to carry out everyday administrative tasks, such as paying bills, signing a lease, or selling a car or building.

This document summarizes the main rules concerning a power of attorney, as laid down by law. Some organizations or bodies, such as financial institutions, may have their own requirements, and you should make inquiries to find out what kind of power of attorney you need.

Definition

A power of attorney is a verbal or written contract in which one person designates another person to act on his or her behalf and perform an action with specified consequences. The person giving the power of attorney is called the mandator, and the person receiving it, the mandatary.

In the event of a dispute, it is easier for both the mandator and the mandatary to prove their position if they have a written copy of the power of attorney. In addition, a written power of attorney can be used to prove to a third party that the mandatary is not an impostor. As a result, this publication deals with written powers of attorney.

The contract

A power of attorney may consist of a private written document or a more complex document drawn up with the help of a legal adviser. It must contain

- the date on which it is drawn up,
- the name of the mandator,
- the name of the mandatary or mandataries,
- a description of the duties conferred on the mandatary, and
- the signature of the mandator.

No witnesses are needed and you are not required to register the document with a notary. The mandatary does not need to be present when the document is drawn up, but he or she must have accepted the power of attorney.

Special power of attorney

A special power of attorney is given for a single, specific purpose, such as selling a recreational vehicle. In this case, it must be formally expressed in the contract. If you are selling a motor vehicle, you should use the form prepared for that purpose by the Société de l'assurance automobile du Québec.

General power of attorney

A power of attorney may also be general. For example, you can ask a friend to manage all of your business. In this case, the power of attorney is expressed in broad terms, but the power of the mandatary is limited to conserving your property and maintaining its normal use.

Remuneration of the mandatary

The power of attorney is presumed to be carried out for remuneration if the services are provided by a professional, but friends or family members are presumed to perform the services without charge. There is nothing to prevent you, however, from stipulating that a friend or relative will receive financial compensation. The two of you should discuss the matter and make sure everything is clear from the start, since the law will require you to pay the agreed amount.

You will have to pay the amount whether or not the power of attorney has been successfully completed, provided, of course, that the mandatary is not at fault. You can avoid this problem by including a clause in the contract stating that payment will not be made in the event of non-completion.

Mandator's obligations

The person who gives the power of attorney, the mandator, must cooperate with the person who accepts it, the mandatary, and at the mandatary's request must advance any sums required to execute the power of attorney. For example, if the mandatary has the transmission on a recreational vehicle replaced in order to sell it, the mandator must pay for the repair, even if the mandatary in the end is unable to sell the vehicle, provided the mandatary is not at fault. In addition, the mandator must pay interest on the amounts disbursed by the mandatary, from the day on which they were incurred.