

SAMPLE POWER OF ATTORNEY AND EXPLANATORY NOTES

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Power of Attorney for the Administration of Property

Sample

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Your power of attorney is an important document

Note

Your power of attorney is a very important document. You (the “mandator”) are giving the person you have chosen (the “mandatary”) the power to manage your money, administer your property and even sell or mortgage your property. Therefore, you should sign this document only for a very specific purpose and for a limited duration; if necessary, you can renew it. You cannot give a power of attorney if you are incapable; you must do so before you become incapable.

After you sign a power of attorney, you still retain the power to manage your money and administer or sell your property.

Your best protection is to monitor your affairs.

You can revoke (terminate) a power of attorney you have given at any time, for any reason whatsoever. If you revoke an existing power of attorney by signing a new power of attorney, you must give a written notice thereof to your previous mandataries, to the financial institutions where you have your accounts and, to the extent possible, to all third parties with whom your mandatary dealt when representing you. This will prevent someone from accepting the former power of attorney without knowing that it has been revoked.

Your mandatary must exercise the powers you have conferred upon him in accordance with your instructions or, failing specific instructions, in your interest. Therefore, you must provide a specific description of the powers you wish to confer and the purpose of the power of attorney.

Advice to help you choose your mandatary and draft your mandate:

1. Give your mandate to a person who professionally exercises the powers you wish to delegate.
2. Consult a professional for guidance in drafting your mandate. This may be a legal advisor or a person who professionally exercises the powers you wish to delegate. Each professional will act within his area of competence; for example, lawyers and notaries will provide legal advice, accountants will provide financial advice, etc.
3. If you do not want to or cannot follow the preceding advice, you should use the sample power of attorney provided below.

The more significant the purpose of a power of attorney or the greater the value of the property involved, the more it is recommended that you deal with a qualified person who is governed by a legal framework, be it through a professional order or an organization whose mission is established by law. This is true as regards the drafting of the power of attorney as well as its execution.

If you are being pressured by someone to sign a power of attorney, you should consult a qualified person before signing anything at all. At the very least, you should get advice from a person you trust who has no connection to the person or persons putting pressure on you.

If you are declared incapable, your power of attorney will no longer be effective. Consequently, while you are capable, you should prepare a mandate given in anticipation of your incapacity and include in that mandate the elements of any power of attorney you wish to keep in effect after you become incapable. For more information about this, please consult the *Barreau du Québec*, the *Chambre des notaires du Québec* or the *Curateur public du Québec*.

If the sample power of attorney or the explanatory notes are not clear, consult a lawyer or a notary.

Understanding the power of attorney

Explanatory Notes

1. WHAT IS A POWER OF ATTORNEY?

A power of attorney refers to the power to act of the person to whom the mandate is given as well as the written document evidencing the mandate.

A power of attorney can be special (to deal with a particular business), or general (to manage all of the mandator's business).

2. WHAT IS A MANDATE?

A mandate is a contract by which a person, called the mandator, authorizes another person, called the mandatary, to represent him and act on his behalf towards third parties.

You may entrust your mandatary with simple (partial) or full (total) administration of your property. Simple administration will allow the mandatary to handle the preservation and safekeeping of your property while full administration will allow him to do everything with respect to your property, including selling or mortgaging the property.

After you sign a power of attorney, you still retain the power to manage your money and administer or sell your property.

ANTICIPATING INCAPACITY

If you are declared incapable, your power of attorney will no longer be effective. This is why you should prepare a mandate given in anticipation of your incapacity while you are still capable and include the elements of the power of attorney that you wish to maintain when you become incapable. If you would like more information about drafting mandates in anticipation of incapacity, please contact the *Chambre des notaires du Québec* or the *Barreau du Québec* or consult the website of the *Curateur public du Québec*.

3. UNDER WHAT CIRCUMSTANCES IS A MANDATE GIVEN?

There are many reasons for giving a mandate. The most common are:

- manage a building;
- manage assets (money, investments, property);
- manage expenses (rent, regular bills);
- manage an estate/succession.

4. HOW SHOULD A MANDATARY BE CHOSEN?

Choosing a mandatary is the most important choice you will have to make. When doing this, we recommend that you pay attention to the following:

- Be sure to give the mandate to a person who has the necessary skills to carry it out. One way to ensure this is to deal with a professional or a person whose activities are governed by a legal framework. This will ensure that the person has the relevant training, that his activities are properly supervised and that if difficulties arise, you will be able to get help and advice. You may have access to dispute settlement services and even to a compensation fund in the event of a breach by your mandatary. To know whether you are dealing with a qualified person, you must, from the outset, check whether the person is a member of a professional order¹ or a regulatory body.² You can do so by contacting the order or organization, and by consulting their website.
- If you deal with a professional or a person whose activities are governed by a legal framework, this person will be able to help you draft the mandate you wish to give to him. Even then, it is prudent to seek help from a notary or lawyer. This recommendation is even more relevant if you are not giving your mandate to a professional or to a person whose activities are governed by a legal framework.
- If you cannot or do not wish to give your mandate to a professional and you do not ask for help from a notary or lawyer when drafting your mandate, you should read these explanatory notes carefully and use the attached sample power of attorney.

1 There are 45 professional orders governed by the Professional Code. A complete list of the professional orders is available on the website of the Office des professions at: <http://www.opq.gouv.qc.ca/index.php?id=19>.

2 These include the Autorité des marchés financiers and the Office de la protection du consommateur.

- If you wish to give a mandate to a person whose activities are not governed by a legal framework, you should give the mandate to a person you know very well and who you trust. That having been said, even if you know the person and trust him, you should take precautions when drafting your power of attorney so as to protect your interests.
- If you wish to give a mandate to a person who is not a professional, who is not governed by a statute and who is someone you do not know, at the very least you should insist on obtaining references and do the necessary verifications. In particular, check for any criminal, bankruptcy and insolvency records.

You can do this by contacting people who already do business with this person, by going to the courthouse nearest you or by contacting the Office of the Superintendent of Bankruptcy Canada at 1-866-941-2863 ³ or at <http://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/home>.

5. WHAT ARE YOUR PRINCIPAL OBLIGATIONS WHEN YOU GIVE A MANDATE?

You are bound to co-operate with your mandatary to help him fulfill his mandate. You must also reimburse your mandatary for the reasonable costs incurred on your behalf and pay him his remuneration if you have agreed to do so and if it is expressly provided for in the power of attorney.

The legal provisions regarding a mandator's obligations and responsibilities are set out in the Civil Code of Québec, in articles 2149 to 2156 and articles 2160 to 2165.

The mandatary acts on your behalf. Consequently, you will be liable for acts performed by him on your behalf. This is an additional reason for taking the time to specify the mandate you are giving him.

³ A minimum fee of \$8.00 per search applies (rate in effect as of May 1, 2014).

6. WHAT ARE THE MANDATARY'S PRINCIPAL OBLIGATIONS?

The mandatary is bound to fulfill the mandate once he has accepted it. He must act with prudence and diligence when performing his mandate. He must also act honestly and faithfully in your best interests and avoid placing himself in a situation of conflict of interests.

During the mandate, your mandatary is bound to inform you, at your request or where circumstances warrant it, of the stage reached in the performance of his mandate.

Your mandatary is bound to fulfill his mandate in person unless you have authorized him to appoint another person to perform all or part of it in his place.

Lastly, your mandatary may not use for his benefit any information he obtains or any property he is charged with administering in carrying out his mandate, unless:

- you consent to such use;
- such use is permitted by law or by the power of attorney.

Even though you have given a power of attorney to someone, the best way to protect yourself is to regularly and carefully monitor the way in which this person is performing the mandate.

The legal provisions regarding a mandatary's obligations and responsibilities are set out in the Civil Code of Québec, in articles 2138 to 2148 and articles 2157 to 2159.

7. HOW IS A POWER OF ATTORNEY MADE?

If you decide to draft a power of attorney yourself, the following advice will help. In addition, the proposed sample will serve as a starting point to ensure that your power of attorney contains the essential elements. If your financial situation permits, you should seek the advice of a professional, such as a lawyer or notary, in order to draft the power of attorney. The professional will be able to gather all the information required to draft a power of attorney that suits your needs.

Generally speaking, the greater the value of the property involved in the mandate, the more appropriate it is to seek advice from a qualified professional.

Similarly, the broader the powers you wish to give your mandatary, the more important it will be to seek advice allowing you to foresee situations that you might not initially have anticipated.

Lastly, it may be useful to provide for two mandataries to perform certain more significant acts.

8. WHAT SHOULD A MANDATE CONTAIN?

The law does not stipulate how a power of attorney should be drafted nor what it should contain. It can therefore take the form of a simple written notice, or be a more complex document prepared by a professional.

Nonetheless, a **“good” mandate should contain the following elements:**

- the date on which it was prepared;
- the name of the mandator and his contact information;
- the name of the mandatary and his contact information;
- a description of the mandate and of the mandatary’s responsibilities;
- the limits of the mandate (for example, authorized transactions, amount of the transactions within which the mandatary is authorized to act, amount requiring the mandator’s signature);
- the revocation of a prior mandate;
- the method (for example, report, presentation of invoices and supporting documents) and frequency (for example, monthly, quarterly, annually) for rendering accounts;
- the mandatary’s remuneration, if you decide to pay him;
- the duration of the power of attorney (the power of attorney should be reviewed annually, even if the mandate covers a longer period) and the conditions of revocation;
- the signature of the mandator and the mandatary.

A mandate is always easier to carry out when it is specific and detailed. That is why you should include as much information as possible. An overly broad or vague mandate may not protect you adequately (**see sections E and F of the sample power of attorney**).

You should always ask a reliable person, ideally, someone who has no connection to your mandatary, to review the power of attorney pursuant to which you will be giving a mandate. You should also ask this person to act as a witness. The presence of this other, reliable, person could provide additional protection. This person could also advise you if your mandatary recommends that you proceed with major transactions or he could review with you the rendering of accounts provided by your mandatary (**see sections H and K of the sample power of attorney**).

For more details, please consult the sample power of attorney. In order to help you draft your power of attorney, this document contains references to the various sections of the sample power of attorney.

9. HOW IS AN ALTERNATE MANDATARY APPOINTED? (SECTION C OF THE SAMPLE POWER OF ATTORNEY)

You can provide for an alternate mandatary in the event your mandatary is no longer able to perform the mandate you have given him.

10. HOW IS A PRIOR POWER OF ATTORNEY REVOKED? (SECTION D OF THE SAMPLE POWER OF ATTORNEY)

If the mandate contemplated in the power of attorney you wish to draft was previously given to another person, it is important to revoke (terminate) it. To do so, you must notify the mandatary of the prior power of attorney, as well as the third parties with whom your mandatary dealt when representing you. For example, in the case of a banking power of attorney, the third parties would be the financial institutions where you have your bank accounts. It is preferable to give a written notice, because it is easier to prove. Lastly, if the power of attorney you wish to revoke was prepared by a notary, you should notify the notary before whom it was signed.

If you would like to keep part of the previous mandate, it would be preferable to revoke it and include that part in the new power of attorney. In this way, you will reduce the risk of ambiguity.

11. HOW SHOULD THE POWERS GIVEN TO YOUR MANDATARY BE DESCRIBED? (SECTIONS E AND F OF THE SAMPLE POWER OF ATTORNEY)

Once again, the greater the importance of the powers conferred by the power of attorney and the greater the value of the property contemplated in the power of attorney, the more it is recommended that you deal with a professional whose activities are governed by a legal framework.

However, should you wish to prepare your power of attorney yourself, here is some advice:

- describe, in your own words, the powers you wish to give to your mandatary and the property covered by the power of attorney;
- be clear and specific; give examples;
- indicate which acts cannot be carried out by the mandatary, in case of doubt;
- state how the authorized acts may be carried out and for how long;
- clearly state the duration of the power of attorney.

12. MUST MY PROPERTY BE INVENTORIED? (SECTION G OF THE SAMPLE POWER OF ATTORNEY)

If the powers you are conferring upon your mandatary allow him to administer, sell or mortgage your property, an inventory should be prepared at the beginning and at the end of the mandate, in order to have an accurate picture of the situation. You may, however, ask to obtain an inventory more often, based on the powers you have conferred.

13. HOW SHOULD THE FREQUENCY AND CONDITIONS FOR THE RENDERING OF ACCOUNTS BE DETERMINED? (SECTION H OF THE SAMPLE POWER OF ATTORNEY)

The frequency of the rendering of accounts should never exceed one year. It should be determined based on the acts to be performed. For example, one should not require a rendering of accounts every week for the deposit in a bank account of a cheque received once a month.

In addition, the greater the importance of the powers conferred, the more the documents to be provided as part of the rendering of accounts should be detailed and numerous.

Lastly, for better protection, it would be in your interests to designate another reliable person to receive all the documents forwarded as part of the rendering of accounts. This person should be totally independent from your mandatary.

14. MUST THE MANDATARY BE REMUNERATED? (SECTION I OF THE SAMPLE POWER OF ATTORNEY)

The mandate may be gratuitous or remunerated. It is usually gratuitous when it is given to a friend or family member. It is presumed to be remunerated when it is given to a professional.

If the mandate is remunerated, you should agree in advance on the amount of the fees (for example, hourly rate, flat rate), the frequency of payments (for example, weekly, monthly) and whether or not you need to approve the fees before they are paid.

15. UNDER WHAT CIRCUMSTANCES DOES A MANDATE TERMINATE AND WHAT MUST I DO? (SECTION J OF THE SAMPLE POWER OF ATTORNEY)

A mandate will terminate in the following situations:

- the term of the mandate has expired;
- the mandator and the mandatory have fulfilled their respective obligations;
- neither the mandator nor the mandatory can perform his obligations due to superior force (cause beyond their control);
- the mandator revokes the mandate;
- the mandatory renounces the mandate;
- the mandator or the mandatory dies;
- the mandator or the mandatory declares bankruptcy;
- the mandator or the mandatory becomes incapable.

The duration of a mandate should never exceed one year; this allows you to amend the mandate and make any necessary adjustments. If no amendments are considered necessary, the mandate can simply be renewed as is.

When the mandate terminates, you should ask your mandatory to provide a full and final written rendering of accounts and a list of all the people with whom he dealt when representing you. Thereafter, you must send a notice to these people informing them that the power of attorney has been terminated. Lastly, you must retrieve all originals of your power of attorney as well as all inventories prepared during the mandate. It is preferable to revoke the mandate in writing.

16. REFERENCE SITES

For more information, you may contact the following organizations or consult their websites:

Ministère de la Justice du Québec

<http://www.justice.gouv.qc.ca/english/accueil.asp>

Éducaloi

<http://www.educaloi.qc.ca/en>

Chambre des notaires du Québec

<http://www.cnq.org>

Curateur public (1-800-363-9020)

<http://www.curateur.gouv.qc.ca/cura/en/index.html>

Barreau du Québec

<http://www.barreau.qc.ca/en/>

Association coopérative d'économie familiale (ACEF) Rive-Sud de Québec

http://www.acefrsq.com/guide_prevention_envers_les_aines.pdf

Publications Québec

<http://www3.publicationsduquebec.gouv.qc.ca/loisreglements/loisrefondues.en.html>

Power of Attorney for the Administration of Property Sample

A) IDENTIFICATION OF THE PERSON GIVING THE POWER OF ATTORNEY (MANDATOR)

Contact information of the mandator:

NAME:

ADDRESS:.....

.....

TEL. NO.:

B) IDENTIFICATION AND APPOINTMENT OF THE PERSON ADMINISTERING THE PROPERTY (MANDATARY)

CONTACT INFORMATION OF THE MANDATARY:

NAME:

ADDRESS:

.....

TEL. NO.:

I,, hereby appoint
[Your name]

..... as my mandatary to act on my behalf and perform
[Mandatary]
such acts as are permitted by law.

C) IDENTIFICATION AND APPOINTMENT OF AN ALTERNATE MANDATARY

If your mandatary ceases to act, is no longer able to act or his mandate is revoked, the following person will automatically replace him upon accepting the mandate in writing.

Contact information of the alternate mandatary:

NAME:.....

ADDRESS:

TEL. NO.:

If none of the mandataries referred to in section B is able to perform his mandate, I appoint
..... as an alternate mandatory,
[Alternate mandatory]
with the same powers as my mandatory.

D) REVOCATION OF A PRIOR POWER OF ATTORNEY

You should revoke (terminate) all prior powers of attorney.

This power of attorney revokes all powers of attorney signed previously.

Indicate any elements of a prior power of attorney that you would like to keep in effect:

.....
.....
.....
.....

E) POWERS CONFERRED

The following are examples of powers that may be conferred upon a mandatory.

- Pay your rent or mortgage: Specify the amount, the frequency, the deadlines, from which account, to whom the payment should be made, etc.
- Pay your regular bills (telephone, cable, electricity, subscriptions, credit cards, car loan, etc.). Specify each recipient or supplier, the maximum amount to be paid, the frequency, the deadlines, from which account, to whom the payment should be made, etc.
- Deposit funds on your behalf into your bank or credit union account and withdraw and transfer funds from that account: Specify the account number, the authorized amounts, their frequency, the purposes for which a transaction can be carried out, etc.

F) LIMITS AND CONDITIONS OF THE POWER OF ATTORNEY

You should specify the scope of the power of attorney, particularly as regards the following elements.

- The maximum amount of the transactions your mandatary can carry out without your written consent (for example, \$1,000 per transaction up to \$5,000 per month);
- As regards carrying out transactions in a bank account: A description of the account, the amount limit per transaction, the maximum number of transactions, the type of transaction (deposit, withdrawal, transfer), etc.

My mandatary must exercise his powers in accordance with the following conditions and within the following limits:

.....

.....

.....

.....

.....

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.....

.....

G) INVENTORY OF PROPERTY

If the powers you are conferring allow your mandatary to administer, sell or mortgage your property, an inventory should be prepared at the beginning and at the end of the mandate, in order to have an accurate picture of the situation. You may require the inventory more often, based on the powers you have conferred.

Specify your choice by checking one or more boxes depending on your expectations.

- My mandatary must prepare a written inventory of my property at the beginning and at the end of the mandate.
- My mandatary must prepare a written inventory of my property at the following intervals:
 - at all times, within two weeks following a request from me to do so;
 - every week;
 - every month;
 - every months;
 - every year, on the anniversary date of the signing of this power of attorney;
 - on December 31 of every year;
 - other; specify:
- I would like to prepare the inventory together with my mandatary.

H) FREQUENCY AND TERMS FOR RENDERING OF ACCOUNTS

You may ask your mandatary for information **at any time**. He has the obligation to render accounts to you on the performance of his mandate. Any other person designated to receive a copy of documents allowing for verification of the mandatary's performance should be independent of the selected mandatary.

My mandatary must render a written account to me on the performance of his mandate at all times within two weeks following a request from me to that effect and, at a minimum, at the following intervals:

- every month;
- every months;
- every year, on the anniversary date of the signing of this power of attorney;
- on December 31 of every year;
- other; specify:

The following information and documents must be provided with the rendering of accounts:

- name and contact information of the persons to whom the power of attorney was presented;
- list of transactions (date, amount, institution, reason);
- copy of the supporting documents for each transaction;
- expenses paid by the mandatary in the performance of his mandate (details, invoices);
- if fees are payable to the mandatary, copies of the supporting documents (details, invoices).

I hereby appoint ,
whose address is

to receive a copy of all documents provided to me by my mandatary when rendering accounts to me. Ideally, this person should not have any connection to your mandataries.

I) MANDATARY’S REMUNERATION

- This mandate is to be performed gratuitously.
- My mandatary is entitled to be paid for the services rendered.
 - I agree to pay an amount of \$\$ at the following intervals: (choose only one)
 - every week;
 - every month;
 - every months;
 - every year, on the anniversary date of the signing of this power of attorney;
 - on December 31 of every year;
 - on the date of termination of the power of attorney;
 - other; specify:

The remuneration will be paid to the mandatary only after detailed invoices have been presented and after I have approved the payment in writing.

The expenses incurred by my mandatary will be reimbursed to him upon presentation of sufficient supporting documents, up to an amount of \$, even if the mandate is to be performed gratuitously.

My written approval will be required before my mandatary incurs any expenses exceeding this amount.

J) TERMINATION OF THE POWER OF ATTORNEY

This power of attorney will terminate upon the occurrence of any of the following events:

- on the date of termination of the power of attorney;
- when the special mandate given for a particular business has been performed;
- if it is impossible for the mandator and the mandatary to perform their respective obligations due to superior force (cause beyond their control);
- when the mandate is revoked;
- if the mandatary renounces his mandate;
- upon the death of the mandator or the mandatary;
- if the mandator or the mandatary declares bankruptcy;
- if the mandator or the mandatary becomes incapable.⁵
- other; specify:

The mandatary must notify me in writing that he has fulfilled his obligations under the power of attorney or that he renounces the mandate or that he is prevented from performing it due to a major problem.

This power of attorney will take effect on the date it is signed and will terminate on unless it is renewed automatically or otherwise terminated or revoked.

This power of attorney will be renewed automatically for a period of

When this power of attorney terminates, the mandatary must render a full and final written account to me in accordance with section H above. The mandatary must also deliver to me all originals of the power of attorney in his possession. Lastly, he must prepare a closing inventory, in accordance with the provisions of section G above.

⁵ If you become incapable, the mandate you gave in anticipation of incapacity will replace this power of attorney.

K) MANDATOR'S SIGNATURE

In witness whereof, I have signed in

Signature of the **mandator** (person who gives the power of attorney):

Date:

Signature of the **witness**:⁶

The witness's role consists essentially in ascertaining that the mandator is not incapable and protecting him against undue pressure.

Contact information of the witness:

NAME:

ADDRESS:

TEL. NO.:

L) MANDATARY'S SIGNATURE

In witness whereof, I have signed in

Signature of the **mandatary** (person who administers the property):

Date:

By signing, the mandatary confirms that he is familiar with the content of the power of attorney and with his obligations as prescribed in articles 2138 to 2148 and 2157 to 2159 of the Civil Code of Québec.

Signature du **témoin**:⁶

Contact information of the witness:

NAME:

ADDRESS:

.....

TEL. NO.:

⁶ Ideally, this person should not have any connection to your mandataries.

M) VALIDITY AND USE OF THE POWER OF ATTORNEY

This power of attorney was signed in.....
numbered original paper counterparts. In order to be valid, the power of attorney presented must be a paper counterpart bearing the original signatures. It cannot be a reproduction.

In order to verify its validity, a person must contact the mandator.

**THIS SAMPLE POWER OF ATTORNEY AND EXPLANATORY NOTES
WAS PRODUCED IN PARTNERSHIP WITH THE FOLLOWING:**

L'AUTORITÉ DES MARCHÉS FINANCIERS

1-877-525-0337

www.lautorite.qc.ca

LE BARREAU DU QUÉBEC

1-800-361-8495

www.barreau.qc.ca

LA CHAMBRE DES NOTAIRES DU QUÉBEC

1-800-263-1793

www.cnq.org

LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

1-800-361-9989

www.chambresf.com

**LA COMMISSION DES DROITS DE LA PERSONNE
ET DES DROITS DE LA JEUNESSE**

1-800-361-6477

www.cdpedj.qc.ca

LE CURATEUR PUBLIC DU QUÉBEC

1-800-363-9020

www.curateur.gouv.qc.ca

**L'INSTITUT QUÉBÉCOIS
DE PLANIFICATION FINANCIÈRE**

1-800-640-4050

www.iqpf.org

LE MINISTÈRE DE LA JUSTICE

1-866-536-5140

www.justice.gouv.qc.ca

LE MINISTÈRE DE LA FAMILLE ET DES AÎNÉS

1-877-216-6202

www.mfa.gouv.qc.ca

L'OFFICE DES PROFESSIONS DU QUÉBEC

1-800-643-6912

www.opq.gouv.qc.ca

**L'ORDRE DES ADMINISTRATEURS
AGRÉÉS DU QUÉBEC**

1-800-465-0880

www.adma.qc.ca

**L'ORDRE DES COMPTABLES PROFESSIONNELS
AGRÉÉS DU QUÉBEC**

1-800-363-4688

www.cpaquebec.ca