IT'S IN YOUR HANDS

LEGAL INFORMATION FOR SENIORS AND THEIR FAMILIES

LEGAL Information
SOCIETY OF NOVA SCOTIA

Introduction

Everyone has legal questions about the laws that affect our lives. These may change over time as we grow up, move into the workforce, buy our first home, start a family, care for aging parents, plan for retirement and become seniors ourselves.

This booklet was produced as part of the Legal Information Society of Nova Scotia *Seniors Legal Planning Project*. The objectives of the project are to:

- Increase seniors' knowledge and understanding about arranging their legal affairs
- Increase the knowledge and understanding of family members, friends, caregivers, and practitioners/service providers working with seniors and their families, about both the legal-financial issues pertinent to seniors and the available resources and supports.

Seniors and service providers helped develop the list of topics included in the booklet by participating in focus groups and surveys.

Of course, many of these topics are not only relevant to seniors. For example, any adult may need to write a will or a power of attorney, or they may be targeted by a scam.

You may read the booklet from cover to cover or you may just want to read the topics that most interest you. As you read through the booklet, you will find legal words which are in bold type. At the end of the booklet there is a glossary which tells you what these words mean.

It is not possible to cover all the legal issues that might interest everyone. You can find information on a variety of other legal issues on the Legal Information Society of Nova Scotia website at: www.legalinfo.org

Maria Franks
Executive Director
Legal Information Society of Nova Scotia

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Disclaimer

This publication provides general legal information only and is not intended to replace professional, legal, or other advice.

The Legal Information Society of Nova Scotia disclaims any liability arising from the use or application of any information in this publication. If you feel you have a legal problem, you should talk with a lawyer.

The law in this publication is current to April 2010.

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DATING AND NEW RELATIONSHIPS

Seniors can protect themselves from financial abuse after they begin dating again, possibly following the death of a spouse, a separation, or a divorce.

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What safety steps should I take if I'm meeting someone for the first time?

While dating and meeting new people is fun, there are **fraudsters** who try to take advantage of these situations. Until you get to know your new friend better, here are some things you can do to protect yourself:

- Consider going out with a group of friends.
- Arrange to meet in a public place such as a café.
- Do not offer to pick the person up in your car, and do not arrange to have them pick you up at your home.
- Tell someone where you are going, and arrange to call that person when you get home.
- Do not tell your new friend about your finances.
- Do not reveal too much personal information until you get to know the person better.
- Do not agree to lend money.
- Be wary if the person tries to talk you into investing in a scheme.

What should I know about safety when using chat rooms or an internet dating service?

There are thousands of internet chat rooms and dating sites. Find out if the website has a strict privacy policy. You want to be sure that the people you chat with cannot find out your name or where you live.

Do not use your real name or give your address, workplace, phone number, or any other information that could identify you. Be cautious about providing information on your hobbies, interests, and hometown as it could reveal your identity. Some people include a photograph, but many do not share a photo until they find someone they want to meet.

You may want to take a computer course to learn more about the do's and don'ts of using the internet.

If I have been dating someone for a long time, do they have a right to my property or money?

No. Dating for a long time does not give your friend the right to your **property** and assets. You do not have to support each other financially. If you plan to move in together, you should talk to a lawyer about how this might change your situation.

Will my rights change if we decide to live together?

When a couple lives together and they don't have a **registered domestic partnership**, the relationship is called a common law relationship. Having a **common law relationship** is not the same as being legally married. For instance, you will not have an automatic right to half of one another's property.

If you live together for two years or more and depend on the other person for financial support, they may have a legal duty to support you if the relationship ends. Or if you financially support them, you may have a legal duty to continue to do so. You should talk to a lawyer about your rights.

If you die without leaving a **will**, your common law spouse may not receive any of your property. Your property is distributed to the people considered to be your nearest relatives as set out in the *Intestate Succession Act*. Your spouse would have to apply to the courts for financial support. For more information on wills, see the section *Wills*. Common law spouses are not included on the *Intestate Succession Act* distribution list unless they have a registered domestic partnership.

What is a registered domestic partnership?

Any two people who are living in a common law relationship can register with the Vital Statistics Division of Service Nova Scotia. The partners can be of same or opposite sex. Under Nova Scotia law, domestic partners have many but not all of the same rights as married people.

For more information on registering a domestic partnership, see www.gov.ns.ca/snsmr/paal/vstat/paal415.asp.

Will I need to change my will if I get divorced or married?

Yes. You should look at your will regularly to make sure it is still what you want and that it still applies to your situation. If you get divorced, for example, you may no longer own some of the property mentioned in your will. You may also want to make changes to your will because of marriage.

You should not try to change your will by marking in or crossing out words. This may cause problems. It is much safer to make a **codicil** or a new will. For more information, see the section *Wills*.

Will I need to change my will if I decide to live with my partner?

If you want your common law partner to have something of yours when you die, you will need to update your will. But if you do not want to leave anything to your partner, then you do not have to change your will.

You may have a legal duty to support a common law partner after your death if they depended on you for support. They would have to apply to the court for support. A registered domestic partner may apply to the court for some financial support from your estate under the *Testators' Family Maintenance Act* if they are not mentioned in your will.

How can I protect my property after we move in together or get married?

The best way to protect your property if you move in together is to ask your lawyer about a **cohabitation agreement**. This is a written agreement between you and your partner that sets out your rights and responsibilities to each other. This can include who owns the property, how property will be divided if you separate, and your support obligations.

If you decide to get married, you could have a **marriage contract**. This is an agreement between two married people that describes who owns what property.

You need a lawyer to write your cohabitation agreement or marriage contract. Your lawyer will explain how your agreement or contract will affect your rights and responsibilities. You should each talk to a different lawyer.

If we live together, will I be responsible for my common law partner's debts?

You are only responsible for the debt of your common law partner if:

- you jointly entered into contracts, like car or apartment leases;
- you co-signed a loan for them; or
- you signed a contract agreeing to pay the loan if they could not.

However, if your common law or domestic partner applies to the court for a division of debts after you separate, the court may order you to contribute if you can.

If my partner moves in, who owns the things we buy together?

You both do. If you and your partner buy something together, such as furniture or a car, you both own it. If you bought something on your own, it remains your property. Make sure you keep proof of payments (such as receipts), and indicate who paid for the item. You may want to include them in your cohabitation agreement.

If you separate, your property is not automatically split 50/50. You have to agree about who gets what property. If you cannot agree, you can ask a court to decide.

How should I protect myself if my partner and I have a joint bank account?

Many couples keep some of their money separate by having their own personal accounts as well as a joint account. They use the joint account to pay household bills and joint purchases.

There are two types of joint accounts. A joint account with **tenancy in common** is an arrangement where each person on the account has a share of the money in the account. The shares do not have to be equal. When you separate or divorce, your share is protected and is yours to take with you. If you die, your share is left to your **beneficiaries**. This type of joint account is subject to **probate** fees when the main **tenant** on the account dies.

The other type of joint account is a **joint tenancy**. This means the account holders each have an equal right to use and control the money in the account. If you have this type of bank account, both you and your partner have equal rights to use the money in the account. When one of the owners dies, the remaining owner automatically owns the deceased person's portion of the assets.

The second type is the most common type of joint account for most couples. It can lead to problems when a relationship breaks up and if one of the account holders takes all the money out of the account.

Account holders do not have to be related, but often they are spouses or partners, or a parent and child.

Is my common law partner entitled to share my pension?

Not automatically. Common law partners are treated differently from married spouses with respect to pensions. The presumption is that each person will keep property in their own name including pensions. Provincially regulated pensions can be divided by the pension administrator after a couple has been living together for at least two years. Federally regulated pensions can be divided by the pension administrator after a couple has been living together for at least one year. However, in order to divide either pension, the pension administrator requires a written agreement or a court order.

If common law partners break up but do not agree to divide the pension, then the court must decide for them. It is best to get legal advice about your legal rights if your relationship breaks up.

Although each case is decided on the evidence, the courts in Nova Scotia usually will not divide pensions received from an employer unless the spouses made direct financial contributions to the plan during the relationship or can prove they both intended to share the pension.

Is my domestic partner entitled to share my pension?

Yes. The *Matrimonial Property Act* applies to registered domestic partners in the same way as it does for married spouses. Registered domestic partners have the same rights and privileges as married spouses to claim a share of their partner's Nova Scotia regulated pension.

If one of the spouses has a federally regulated pension, the partners must have lived together for at least one year in order to apply for a division of the federal pension. Even if the partners have not lived together for a year, a partner could ask a court to make an order to compensate the partner who has lost pension rights.

The court could order that a portion of the pension be held in trust by the pension member on behalf of the other partner, and paid out later. Or the court could award other property to compensate for the pension rights.

Is my common law or domestic partner entitled to my pension when I die?

Only if you have named them as the beneficiary of the survivor's benefit or if your pension was already divided during your lifetime.

What can I do if the person I am living with is stealing from me?

Stealing is abuse. Research shows that older women and men are more likely to be abused by a spouse, common law partner, or significant other than by a stranger.

Often people are ashamed to speak out or ask for help if their partner is stealing from them. Sometimes they think that no one will take the abuse seriously because it is happening in a relationship. But all abuse is wrong and unacceptable.

If someone is abusing you, there are several things you can do to get

help:

- Talk to your doctor, counsellor, or someone in your faith community.
- Talk to a close friend or a family member.
- If you feel safe, talk to the abuser about your feelings.
- Call the Department of Seniors, Senior Abuse Line 1-877-833-3377 (toll free) between Monday and Friday 8:30 – 4:30 pm. Find out about support services, such as counselling, transition houses, and mental health services.
- If you have been harmed or threatened, or you are afraid, call the police or the RCMP. If it is an emergency, call 911.
- Leave the abusive situation and go somewhere safe, such as the home of a family member or friend, a shelter or a transition house for women, or a hotel.

More information for women leaving an abusive relationship is available in a booklet called *Making Changes: A Book for Women in Abusive Relationships* published by the Nova Scotia Advisory Council on the Status of Women:

Nova Scotia Advisory Council on the Status of Women
PO Box 745, Halifax, Nova Scotia B3J 2T3
Phone: 902-424-8662 /1-800-565-8662
Fax: 902-424-0573
E-mail: women@gov.ns.ca
Website: http://women.gov.ns.ca

The Legal Information Society of Nova Scotia also has brochures on abuse, elder abuse, and divorce as well as information on protection orders and peace bonds.
Check out www.legalinfo.org
Click on "Legal Information,"
and then "Seniors."

What should I do if I suspect that my parent or elderly relative is being financially abused by their partner?

Talk to your parent or relative. Let them know that you are available to help.

If they are unable to protect themselves, the *Adult Protection Act* places a duty on everyone to report the abuse or neglect of an adult in need of protection. You can call the Adult Protection Service at 1-800-225-7225 (toll free) or your local police.

For more information on the Adult Protection Service, see the section *Abuse of Older Adults*.

Where can I get more information on dating and new relationships for seniors?

The Public Health Agency of Canada promotes the health of Canadians including the health of Canada's seniors in relationships:

Public Health Agency of Canada
Division of Aging and Seniors
Ottawa ON K1A 0K9
Telephone: (613) 952-7606
Fax: (613) 957-9938
Email: seniors-aines@phac-aspc.gc.ca

For additional articles on health and safety issues, go to Health Canada's "It's Your Health" website at http://www.hc-sc.gc.ca/hl-vs/iyh-vsv/index-eng.php
Click the "Seniors" button.

Or write "It's Your Health" at:
Health Canada
12th Floor, Room 1264D, Brooke Claxton Building
Tunney's Pasture
Postal Locator: 0912D
Ottawa, Ontario K1A 0K9
E-mail: iyh-vsv@hc-sc.gc.ca
Telephone: 613-957-2991
Toll free: 1-866-225-0709
Facsimile: 613-952-8644
TTY: 1-800-267-1245 (Health Canada)

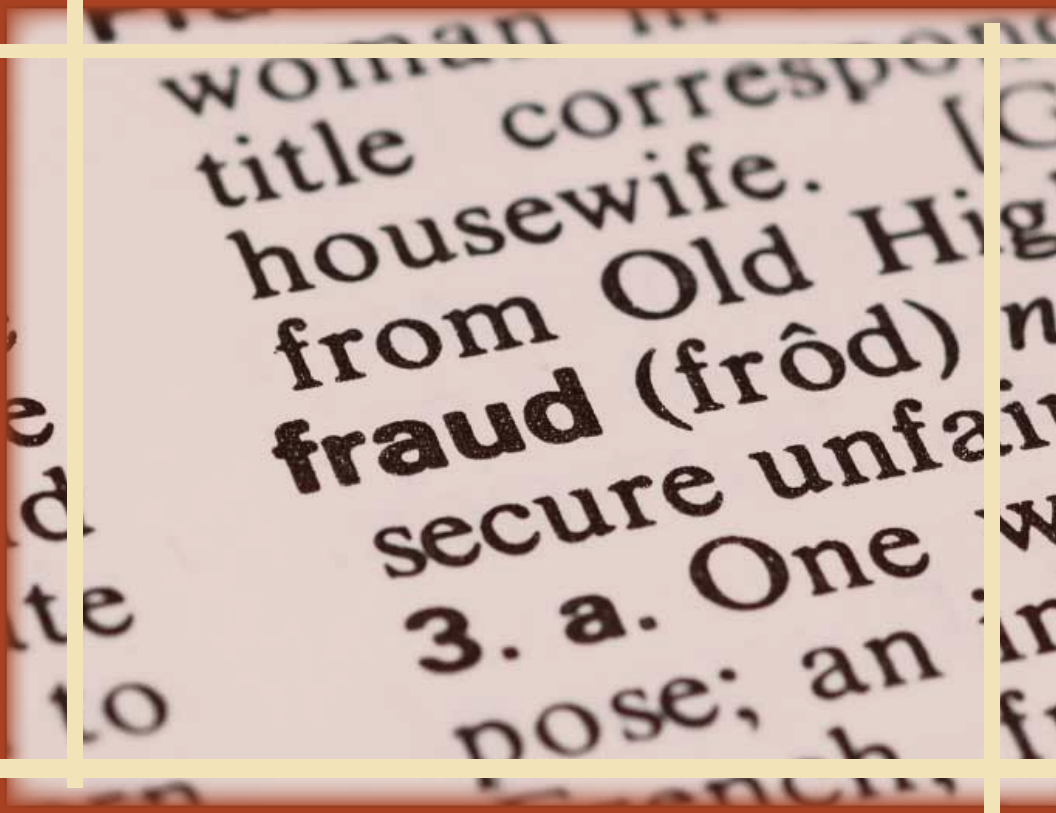
Information on sexual health especially for gays and lesbians, including seniors, is available at:
Canadian Rainbow Health Coalition
P.O. Box 3043
Saskatoon, SK S7K 3S9
Toll-free phone: 1-800-955-5129
Website: www.rainbowhealth.ca
Click the "Seniors" button.

More information on registered domestic partnerships and common law relationships is available from the brochure *And They Lived Happily Ever After*…." It is available at:
Legal Information Society of Nova Scotia
5523 B Young Street
Halifax, Nova Scotia
B3K 1Z7
Tel: 902.454.2198

It is also available as a PDF at www.legalinfo.org.
Under "Family,"
go to "Common Law Relationships."
The link to the PDF appears under the questions.

Notes

SCAMS, IDENTITY THEFT AND OTHER FRAUD



Fraud is a criminal offence, and it is a growing crime in Canada. Fraud affects all age groups, but older adults may be more at risk. Fraud usually causes financial loss for the victim. The internet has created new opportunities for fraudsters.

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What is fraud?

Fraud is intentional deception. Some types of fraud are referred to as **scams** or schemes.

The person who is deceived is generally called the victim or mark. The person who does the deceiving is generally called a **fraudster**, a scam artist, a perpetrator, or a thief.

Fraud can be very profitable for criminals. Fraudsters are hard to catch because they are skilled at what they do, they manage to disappear before being caught, and they may not even be located in Canada. Victims are often too embarrassed to tell anyone, and so many frauds do not get reported.

What is consumer fraud?

Consumer fraud is intentionally deceiving a person who buys a product or a service. For example, you are deceived into paying money for something that does not exist, is not accurately described, or is of little or no value. Another example is being deceived into providing information that allows the fraudster to steal from you.

Consumer fraud happens when a person, a group, or a company takes advantage of individuals.

How does consumer fraud happen?

Fraudsters approach their victims in many different ways:

- coming door to door
- calling on the telephone
- sending mail through the postal system
- sending electronic mail (email), or
- meeting in a coffee shop, club, church or other place

They may attract you with a TV commercial, a magazine article, a newspaper advertisement, a website, or a survey.

A fraudster can cause you financial loss without having to make any personal contact with you. They are always thinking of new and different scams to take advantage of people.

What are common kinds of scams?

There is not enough space to list all of the scams that exist, and it is also difficult to guess what the next new scam will be. Examples of some of the more common consumer fraud scams include:

Identity Theft: The fraudster uses your personal information to steal from you. This is the top fraud across North America.

Advance Fee Fraud: You are asked to make a payment or to give your personal or financial information before you receive a product or service.

ATM, Credit Card, and Debit Card Fraud: The fraudster uses your pass codes and card numbers to withdraw cash from your accounts or to pay for purchases with your credit.

Counterfeiting: The fraudster pays for purchases with fake money, cheques, or money orders.

Door to door frauds: The fraudster comes to your door and says "I was driving by and noticed that your roof needs repair." Or "I have some left-over materials I can sell you at cost." Or "I'll need a 50% down payment to purchase materials." Always check with the Better Business Bureau or a neighbour who has used them before hiring any person to do work on or in your home.

False Charities: The fraudster pretends to be a charity (sometimes by using a similar name, thanking you for your past support, or by trying to take advantage of a disaster such as an earthquake or flood). Sometimes the fraudster will go door to door pretending to collect donations for a charity.

Impersonation: The fraudster pretends to be someone or something else for personal gain; for example, someone pretends to be a grandchild who needs money.

Investment Fraud: The fraudster misleads you into giving money for business ventures that promise unrealistic profits.

Misleading Job Opportunities: The fraudster promises a large income for easy work, a fee or a start-up investment, or an almost guaranteed job after an expensive course.

Online Auctions, Lotteries, and Contests: The fraudster tricks you into purchasing items of little or no value, or into buying tickets or prizes that do not exist or have little value.

There are many other new and old schemes. Frauds like pyramid schemes, chain letters, and free or bargain travel rip-offs are old scams used successfully year after year.

How can I recognize fraud?

If it sounds too good to be true, it usually is. Here are some things you can look for that will sometimes point to a scam:

- contact from strangers looking to offer you a deal
- over-excited callers using a lot of pressure
- people pushing you for immediate answers or confirmation of a deal
- people who insist that you not tell anyone else about the deal
- people who discourage you from getting any advice or advice only from a person they suggest
- any deal in which what you earn will be based on how many people you involve in the deal
- people who will not send you any information until you give them money or information
- any deal where you have to pay a fee or buy something before you receive a prize, credit, or product that you did not order
- prices so low they are unreasonable compared to their true value
- any reward, prize, or payment (usually very large) you are promised in exchange for your banking information
- contact from people, businesses, or creditors that you do not know
- people claiming to represent a charity that you do not know or that has a name very close to a charity that is well-known
- companies that try to sound like a well-known agency or company
- people contacting you for your credit card, calling card, banking information, or social insurance number
- any claim that you have won a prize for a contest you have not entered
- people saying they are calling from your bank and asking you to provide information about your account to help them catch a fraudster

What is identity theft?

Identity theft is getting your personal information and using it to steal from you. Identity theft is now the fastest-growing fraud. This is because of the growth of technology such as the internet.

Personal information might include your address, date of birth, social insurance number (SIN), credit card or bank card numbers, personal identification numbers (PINs) and pass codes, and driver's licence numbers. If identity thieves get your personal information about you, they may:

- take money out of your bank accounts

- charge purchases to your credit cards
- apply for new credit cards or loans in your name
- buy expensive items on credit in your name

In extreme cases, identity thieves not only collect personal information about you, but they also watch you. They learn about your friends and family members, and they learn your personal weekly routine. Then they decide how best to take advantage of you. Sometimes they pretend to be stranded family members who urgently need money. Sometimes they pretend to be you and arrange to mortgage or sell your house.

How do identity thieves get personal information?

Here are some of the ways identity thieves can get your personal information. They may:

- steal it from your wallet or purse, home, mailbox, workplace, vehicle, or computer
- go **phishing**, which means sending you an email threatening serious consequences if you don't update information on a website at once. This gets you to go to the website so that they can get personal information such as passwords and access codes from you.
- pretend to be someone entitled to request information (such as a government official, bank employee, landlord, creditor, or employer)
- collect it from your garbage. (for example, bank and credit card statements, copies of credit or loan applications, financial statements, and tax returns.)
- redirect your mail, open it, and then put it in your mailbox
- rig automated teller machines (ATMs) and debit machines so your debit or credit card number and PIN can be read
- shoulder surf — hang around your shoulder to watch as you punch your access codes and passwords into ATMs, debit machines, telephones, and computers
- buy or trade customer mailing lists
- search obituaries, phone books, directories, and other public records
- place false advertisements for jobs to obtain your résumé and contact information
- pretend your personal details are needed to claim a prize or lottery winnings
- use letterhead that looks like it comes from a government department or financial institution to get personal information from you

How can I protect myself from fraud?

The best way to protect yourself from fraud is to be informed and alert.

- Protect your personal information. Do not give any of your banking or credit card information to anyone you do not know and trust. Do not write down your PIN.
- Cover the keypad or keyboard when you are entering your passwords and pass codes, and look around you to make sure that no one is looking over your shoulder.
- Check before making purchases when you are not dealing face to face with someone you know, ask for a name and contact information, and make sure the person is who they claim to be.
- Get at least two written quotes for all repair work; ask for references and check them; check for complaints at the Better Business Bureau; and don't agree to pay all the money up front.
- Be aware that police and financial institutions never call or email you to ask for your bank card information, credit card details, or PIN.
- Do not provide more personal information than is necessary for your business transaction.
- Only give your SIN when absolutely necessary, and do not carry your SIN card with you. Businesses such as stores should not be asking for your SIN number.
- Do not give your address and phone number unless there is a good reason.
- Carry only the documents and cards you need.
- Do not leave your purse or wallet unattended.
- If you are paying by debit or credit card, make sure that your card number does not appear on the receipt.
- If you are paying with a debit or credit card in a restaurant, keep your card in sight. Arrange to pay at your table or go with the server to process the card.
- Shred receipts and copies of papers you no longer need such as bank statements, tax returns, credit applications and statements, receipts, insurance forms, and credit offers you get in the mail.
- Do not leave personal information sitting around at home, in your vehicle, at your workplace, or on your computer.
- Keep important documents such as your birth certificate, tax returns, and social insurance card in a secure place.
- When you receive renewal documents and cards, destroy the old ones and sign the new ones at once.
- Know when your credit card and financial statements and utility bills are supposed to arrive in the mail.

- Keep credit card, debit card, and ATM transaction records so you can match them to your statements.
- Check your bank and credit card statements carefully to ensure that there are no withdrawals or charges that you were not expecting.
- Update your credit cards to ones that have the latest security features, for example, "chip cards" which require a PIN because they are embedded with a micro-computer chip.
- Let your credit card company know when you are leaving the country. Your credit card company should contact you if there is unusual activity on your card such as stays at international hotels.
- Lock your mailbox.
- Pick up your mail promptly.
- Do not pick pass numbers (for your credit card, bank account, etc.) that refer to your personal information (like your birth date or SIN).
- Do not pick passwords (for your computer) that can be easily be guessed such as the name of your pet.
- Use spyware filters, email filters, and firewall programs on your computers.
- If you use secure internet sites for financial transactions, follow security instructions when you enter and leave the site. Under the "Tools" section in your web browser, click "Clear Recent History" when you are done.
- Be sure all personal information is deleted before you sell, recycle, or discard your computer. You may have deleted files, but the information may still be on the hard drive.
- Consider signing up with the Do Not Call List, which prohibits most businesses that you don't deal with from contacting you by phone.

You can find contact information for these resources at the end of this section.

What can I do if I suspect that I am the target of fraud?

If you suspect that you are the target of fraud, do not deal with the person you think is trying to deceive you. Do not agree to provide further money to get your first payments back or to keep a deal open.

You can contact your local police or RCMP detachment and PhoneBusters. You may also report the crime online at the sites listed

at the end of this section.

You should also contact Equifax Canada and TransUnion Canada. They are credit reporting agencies. They can place an alert on your account so creditors must call you before opening any new accounts or changing your existing accounts. Also, ask them to send you a copy of your credit report so you can see if an identity thief has opened any new accounts or debts in your name.

You can find contact information for the resources named above at the end of this section.

Who should I contact if I have been the victim of fraud?

If you have been the victim of fraud, you must contact the financial institutions and credit card companies where you have your accounts. Tell them what happened and have them freeze your accounts. If the fraud has affected your account, it must be closed. You will need to open new accounts.

You should contact the police or RCMP to report that you have been the victim of fraud, no matter how small your loss may be. They may start an investigation.

You should also contact Equifax Canada and TransUnion Canada. (See their contact information at the end of this section.) These credit reporting agencies can place an alert on your account so creditors must call you before opening any new accounts or changing your existing accounts.

Report the fraud to PhoneBusters and to the online reporting sites listed at the end of this section.

If your government-issued documents were lost or stolen, contact the department, explain what happened, and ask for new documents. Call 1-800 O CANADA to find out how to replace your SIN card.

If you think your mail is being stolen or redirected, contact Canada Post at 1-800-267-1177 or www.canadapost.ca.

Where can I get more information about scams?

PhoneBusters
PhoneBusters is a national anti-fraud call centre that collects statistical fraud information and educates the public about fraudulent telemarketing scams. It is also known as the Canadian Anti-Fraud Centre.
Telephone: 1-888-495-8501 (toll free)
Website: www.phonebusters.com
Email: info@phonebusters.com

Industry Canada
Industry Canada is a federal government department that deals with economic growth. It provides tips to consumers about how to protect themselves in various consumer situations. It has resources, such as the Canadian Consumer Handbook, and publications for seniors and youth. You can find them on the Industry Canada website. (Under "Resources," click on "Consumers," then "Consumer Measures Committee," then "Consumer Information.")
Telephone: 1-800-328-6189 (toll free)
Website: www.ic.gc.ca
Email: info@ic.gc.ca

Competition Bureau of Canada
An independent, federal government agency concerned about competitive markets and consumer information. It investigates complaints and enquiries from the public about consumer issues such as deceptive product labelling and price fixing.
Telephone: 1-800-348-5358 (toll free)
Website: www.cb-bc.gc.ca
Email: compbureau@cb-bc.gc.ca

Royal Canadian Mounted Police
Telephone: 1-800-803-7267 (toll free)
Website: www.rcmp-grc.gc.ca/ns/index-eng.htm

- Click the "Quick Link Scams" to go to the "Scams and Frauds" page, which gives information about reporting scams and frauds, resources, and types of fraud and scams
- Read The Seniors Guidebook to Safety and Security at: www.rcmp-grc.gc.ca/pubs/ccaps-spcca/seniors-aines-eng.htm Especially see the chapters on identity theft and fraud.

Nova Scotia Department of Seniors
1740 Granville Street, 4th floor
PO Box 2065

Halifax, NS B3J 2Z1
Telephone: 1-902-424-0065
Email: seniors@gov.ns.ca

Information Line: 1-800-670-0065 (toll free in NS)
Website: www.gov.ns.ca/scs

- See fact sheets and information

Click "Senior Abuse Awareness & Prevention," then "Financial Exploitation"
Direct link to the URL: www.gov.ns.ca/scs/financialex.asp

Service Nova Scotia & Municipal Relations (SNSMR)
Mail Room, 8 South, Maritime Centre
1505 Barrington Street
Halifax, Nova Scotia B3J 3K5
Telephone: 1-800-670-4357 (toll free)
Email: askus@gov.ns.ca

Website: www.gov.ns.ca/snsmr/default.asp
- Consumer Information
  www.gov.ns.ca/snsmr/consumer/
- Fraud
  www.gov.ns.ca/snsmr/consumer/fraud/default.asp
- Articles
  www.gov.ns.ca/snsmr/consumer/savvy.asp

Better Business Bureau of the Maritime Provinces Inc.
1888 Brunswick Street, Suite 805
Halifax, NS
B3J 3J8
Inquiries: 1-902-422-6581
Complaints: 1-902-422-6581

Email: bbbmp@bbbmp.ca
www.maritimeprovinces.bbb.org/
- Tips for consumers
- Check out a business or a charity
- File a complaint
- Information for businesses

Rotary Club of Halifax
ABCs of Fraud
Speaker Service
One-hour presentations to seniors' groups to provide information and tips on consumer fraud.
Contact: Bill VanGorder, Coordinator
Telephone: 1-902-454-2267
Email: info@stopfraudNS.ca
www.stopfraudNS.ca

Heads Up Fraud Prevention Program
An online resource that provides a listing of different types of consumer fraud scams, explanations, tips, and links.
www.heads-up.ca

Reporting Economic Crime On-line (RECOL)
An association that allows you to file fraud complaints online.
www.recol.ca

To obtain a current copy of your credit report, contact Equifax Canada or TransUnion Canada:

Equifax Canada
Telephone: 1-800-465-7166 (toll free)
Website: www.equifax.com

TransUnion Canada
Telephone: 1-866-525-0262 (toll free)
Website: www.tuc.ca

National Do Not Call List
Website: www.lnnte-dncl.gc.ca/index-eng
Telephone: 1-866-580-DNCL (3625)
Fax: 1-888-DNCL-Fax (362-5329)
TTY device: 1-888-DNCL-TTY (362-5889)
Note: To use the National DNCL service line, you must call from the number you wish to register.

If you have complaints about a telemarketer, you can call 1-866-580-3625 or write:
Telemarketing Regulation
c/o CRTC
Ottawa ON
K1A 0N2

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

Online information is available at the LISNS website at:
www.legalinfo.ca
under "Legal Information"
go to "consumers"

Notes

FUNERAL PRE-PLANNING

Pre-planning your own funeral allows you to decide what kind of funeral you want and how much you want to spend.

LEGAL Information
SOCIETY OF NOVA SCOTIA

Should I plan my own funeral?

Most funeral homes offer funeral pre-planning or pre-arranging services. This means you decide on the type of funeral you want, and in most cases, pay for the services when the arrangements are made. If you have a funeral plan, your survivors will know what you wanted, and you spare them the difficulty of making decisions at a stressful and emotional time.

If you have a pre-planned funeral, you should:

- tell your family and the people who would likely organize your funeral about the arrangements you have made
- leave the contract for the funeral where it will be found and read immediately after your death

You should *not* put your wishes for your funeral in your will. The will is often not opened until after the funeral.

If you are thinking about pre-paying for your funeral, get at least two quotes. Be sure you know what is included in the basic price and what costs are extra. Consider whether the extras being offered are necessary to your funeral plans and fit your budget.

You can also arrange for a cemetery lot, grave liner, vault, urn, and memorial (including installation). The opening and closing of gravesites can also be pre-arranged. The sale of these cemetery plans is regulated by the *Cemetery and Funeral Services Act*.

Where do I go to plan my own funeral?

In Nova Scotia, a funeral home is the best place to go for help planning your funeral. You can pre-purchase your funeral from a funeral home. Some funeral homes will also just register your wishes for free. You will be given a wallet-sized card which indicates that you have registered your wishes at that funeral home.

You can also buy a funeral plan from a funeral planning company.

What are a funeral home's legal obligations?

In Nova Scotia, any funeral home, crematorium, or company providing funeral merchandise or services to the public must have a funeral home licence. This licence is issued by Service Nova Scotia and Municipal Relations.

Funeral homes in Nova Scotia are regulated by the Embalmers and Funeral Directors Regulations. They regulate how a funeral home,

funeral director, embalmer, and apprentice embalmer can advertise. For example, funeral goods and services cannot be sold over the phone or through door-to-door sales.

What are a funeral home's legal obligations when planning a funeral?

All details of the arrangements and the costs must be in a written contract. As a customer, you must receive a copy of the contract.

The funeral home must deposit any money you pay for a pre-arranged plan into a trust account. The money and the interest earned must stay in the account until either the services are provided or the contract is cancelled.

If the funeral home goes bankrupt, the money kept in trust will be distributed by the courts to everyone whose money was in the trust.

Can I take out insurance to cover my funeral plans?

Yes. You can buy an insurance policy to cover funeral expenses. Funeral homes do not insure funerals. You will need to talk to an insurance company.

Can I cancel my pre-paid funeral plans?

Yes. You can cancel your pre-paid funeral plan at any time. However, the seller may charge an administration fee and may keep the interest plus up to 10 % of the money you have paid.

If you signed a funeral agreement with someone who is not a funeral home such as a funeral planning service, you may cancel your contract within 10 days by registered mail or in person. You will not have to pay a financial penalty, and all money paid must be refunded to you.

If you bought anything for your funeral and you then cancelled the contract, you will receive the item you bought instead of cash.

Your **executor** may cancel a contract for a pre-paid funeral if you died in another province or country, or if you died under unusual circumstances that mean that the goods or services cannot be used at the time of your death.

You cannot get a refund on a cemetery plot if you decide you don't want to use it, but you can re-sell it to someone else.

Where can I get more information on planning my own funeral?

Service Nova Scotia has information on funeral practices on its website: www.gov.ns.ca/snsmr/consumer/funserv.asp

You can read the Nova Scotia Cemetery and Funeral Services Act online: www.gov.ns.ca/legislature/legc/statutes/cem_funs.htm

The municipality where you want to be buried will have a bylaw on cemeteries. Halifax Regional Municipality's bylaw C-700 can be read online at: www.halifax.ca/legislation/bylaws/hrm/documents/By-LawC-700.pdf

To find out about bylaws in other areas of Nova Scotia, contact your town or municipality office.

There are also many books available through the public libraries which can help you make decisions about pre-planning a funeral. One recommended resource which includes checklists for funeral pre-planning is:

Big Death: Funeral Planning in the Age of Corporate Deathcare
Author: Doug Smith
Publisher: Fernwood Publishing (2007)
ISBN-10: 1552662403

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

Notes

GRANDPARENTS' RIGHTS

Grandparents sometimes lose contact with their grandchildren. It can happen for many reasons such as divorce. This section provides information about your rights as grandparents.

LEGAL Information
SOCIETY OF NOVA SCOTIA

Do grandparents automatically have the right to see their grandchild?

No. Unless grandparents have won that right in court, it is generally the decision of the child's parents and the child.

Sometimes grandparents lose access to their grandchildren because of a family dispute, separation, divorce, or remarriage.

What is the difference between custody and access?

Custody means having the care and control of a child. The person who has custody of a child makes the major decisions about the child, such as where the child will go to school, and usually the child lives with them.

Access is granted in an **order** or agreement that recognizes the child's right to spend time with others such as another parent, grandparent, or relative. Access could be weekly or monthly visits, overnight stays, or holiday time together. It also includes being able to telephone, email, or send mail to the child.

Can I apply for custody of or access to my grandchild?

Yes. Any relative or other caring person can apply for custody or access. However, you must first get the court's permission to make an application. This is called "seeking leave of the court." If you are considering this, you should talk with a lawyer.

You must convince the court that it would be in the child's best interests to even allow the application to go ahead. The best interests of the child come first.

Grandparents are not given preference over other family members or other caring people seeking leave. After the parents, no one is automatically entitled to custody or access.

How likely is it that a grandparent would get leave to apply for custody or access?

Grandparents have been granted leave by the Nova Scotia courts in the past under appropriate circumstances, but they have also been denied it.

In Nova Scotia, when parents are divorcing, grandparents may seek access to their grandchildren through the federal *Divorce Act*. In cases where divorce is not involved, grandparents may apply for access under *Nova Scotia's Maintenance and Custody Act*.

The *Divorce Act* and the *Maintenance and Custody Act* do not refer to grandparents specifically.

A grandparent may also have to prove to the judge that giving them custody is in the best interests of the child. The court will consider many factors including the age of the grandparents, their ability to look after the child, and the possible negative effect of exposing the child to litigation.

Do I have custody of my grandchild if my teenage child becomes a parent?

No. If your child becomes a parent while still living at home, under age 19, and dependent on you, you have a legal obligation to provide for them. But because your child is now a parent, they have the right to make decisions about their child (your grandchild).

Could the court give joint custody or access to a grandparent?

Yes. The court may decide to award joint custody to one or both of the parents and to a grandparent. An order for joint custody would probably be given only if the parents and grandparent all agree.

An order for joint custody may happen, for example, in the case of very young parents who are having trouble making decisions about what is best for the child and who would like the help of one or more of the grandparents.

What does it mean if a court puts an access order in place?

An **access order** can provide for contact between the child and the applicant in the form of visits, oral or written communication, or any other method of communication. The court may also add other privileges. For example, it may permit grandparents to travel with the child out of country to visit extended family.

How long will an access order last?

The court decides how long the access order will last. An access order may be in place for a definite or indefinite period of time, or until a specific event occurs. The court may put terms, conditions, and restrictions in the order.

If I have an access order, must the person with care of my grandchild allow me contact?

Yes. An access order is a court order, and it must be obeyed.

If the person with care of your grandchild is preventing your access to your grandchild, try to work out an arrangement with them. Avoid getting the police or the courts involved if at all possible. But if this is impossible, you can apply to court for help through an **enforcement order**.

Once you have this, the police can enforce the order to obtain access to your grandchildren.

For more information on temporary and permanent care of a child, see *If my grandchild is taken into permanent care, will they be placed in my home?* and *Is there financial support available for permanent or temporary care?*

Can I apply to change an access order?

Yes. You, the child's parent, or their guardian can apply to the court to change, suspend, or stop an access order, or to change any part of the order.

The court will only change an access order after careful consideration. It will only consider the best interests of the child. It must be satisfied that there has been a change in the needs or circumstances of the child since the order was made.

What is a mediator?

A mediator is an independent third party who helps people reach an agreement. For example, if parents and grandparents cannot agree on custody and access, **mediation** is an option. A mediator will discuss the issues with the people involved and help them come to an agreement.

Mediation services are listed in the Yellow Pages of the phone book. Family counselling services often have mediators skilled in dealing with these issues. Family mediation services are also available through some family courts.

For contact information on mediation services, see the end of this section.

What is conciliation?

Unlike **mediation**, conciliation is a mandatory part of the family court process, and you don't get to choose a conciliator. The conciliator has two purposes: (1) to see if an agreement can be reached, and (2) if not, to make sure all the paperwork has been filed for a judge to decide the case. A conciliator's job is to ensure the system runs as smoothly as possible.

Conciliators are court staff members who are assigned files. They check to see if agreement is possible, but they cannot make any decisions if the parties don't agree.

Also unlike mediation, you do not have to be in the same room as the other person under conciliation. The conciliator talks to you and then to the parent(s) separately. You negotiate through the conciliator.

What is a consent order?

If you resolve the issues by using mediation or conciliation, you can settle the matter with a **consent order**. Conciliators are a part of the court system, so you still have to go to court. But you do not have to have a trial or go before a judge.

What should I do if I suspect my grandchild is being seriously neglected or abused by his or her parents?

If you have reason to believe that one or more of your grandchildren is being neglected or abused, the Department of Community Services will investigate. Contact Community Services using these toll-free numbers:

1-877-424-1177 (8:30 am - 4:30 pm weekdays)
Alternate number: 1-866-922-2434 (Weekends or holidays)

If there is **abuse** or **neglect**, in most cases, Community Services will try to keep a child in the home while they offer services to the parents and the child. If a child is in serious danger, they may remove them from the home and take them into care.

"Taken into care" means the child has been removed for their own safety from the home. "Plan of care" is the Nova Scotia's government's term for arrangements that are made about the child. Care can be temporary or permanent.

Community Services licences the children's aid societies, which are provincial care agencies licensed under the *Children and Family Services Act*. If a child is taken into care, Children's Aid must bring the matter into court for a judge to review within five days or return the child to the home.

If my grandchild is taken into permanent care, will they be placed in my home?

Not necessarily. Permanent care placement of a child happens under the *Children and Family Services Act*. The act says a child in care should be provided for as nearly as possible as if they were under the care and protection of wise and conscientious parents. They will be placed in a home of their own religion, language, race, and culture if possible.

The act gives priority for care to relatives. The court must take into account the need for a child to maintain contact with relatives and friends. When the court decides not to return a child to the parents, it must consider whether it is possible to place the child with a relative. The judge decides based on the best interests of the child.

If not placed with a relative, the child can also visit regularly and in private with family, relatives, and friends, unless the court says it may be harmful to them. Community Services replaces the parents as legal guardian. This means it chooses where the child will live and go to school, and makes decisions about the child's health treatments.

A child in permanent care can be adopted if that is in the best interests of the child. Grandparents can also adopt their own grandchild. Community Services is no longer involved after adoption. The new adoptive parents of the child get to determine if the child can see their grandparents.

Is there financial support available for permanent or temporary care?

No, but the person who has permanent care may qualify for government child benefits that a parent is eligible for such as the Canada Child Tax Benefit.

How do I find a family counsellor or mediator?

Family and individual counsellors, including mediators, are listed under "Marriage, Family & Individual Counsellors" or under "Mediation Services" in the Yellow Pages of your local telephone book. You may also contact Family Mediation Canada at www.fmc.ca/ or 1-877-362-2005.

Where can I get more information on grandparents' rights?

Nova Scotia Grandparents' Rights Association
RR#2
Malagash NS B0K 1E0
Telephone 902. 257.2974

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

LISNS also has online information at www.legalinfo.org.
Under "Legal Information,"
go to "Family."
Click "Grandparents' Rights."

Notes

IMPORTANT UPDATE
September 2014

Grandparents' rights

Recent changes to Nova Scotia's Maintenance and Custody Act , in effect as of September 1, 2014, mean grandparents no longer need the court's leave, or permission, to apply to court for access with a grandchild.

Before this change, grandparents first had to get the court's permission to apply for access. Now, grandparents can just apply to court directly for access, as a parent or guardian may do. Anyone other than a parent, guardian or grandparent must get the court's permission to apply for access, and grandparents still need the court's permission to apply for custody of their grandchildren.

For more information:

- http://www.legalinfo.org/family-law/grandparents-rights.html
- http://www.nsfamilylaw.ca/custody-access/information-grandparents
- Nova Scotia government press release: http://novascotia.ca/news/release/?id=20140825001
- Read the wording of the changes to the law: http://nslegislature.ca/legc/bills/62nd_1st/3rd_read/b040.htm

Or, call our free Legal Information Line at 1 800 665-9779 or 902-455-3135.

Legal Information Society of Nova Scotia
5523B Young Street
Halifax NS B3K 1Z7
902-454-2198

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GUARDIANSHIP OF ADULTS

If an adult is unable to manage their own affairs, a family will sometimes apply to the court to have a guardian appointed. A guardian has legal responsibilities and duties related to the person's finances.

LEGAL Information
SOCIETY OF NOVA SCOTIA

What is guardianship?

Guardianship allows an appointed person to be responsible for the personal and financial interests of an individual who is mentally incapable of caring for their own interests. Only a judge can appoint a guardian for an adult.

The person who applies for guardianship is called a guardian. The person for whom the guardian is responsible is called an incompetent person.

Who is an incompetent person?

An **incompetent** person is anyone who is not capable of managing their own affairs because of mental infirmity. A person might be incompetent because of:

- a coma following an accident
- an illness such as Alzheimer's disease or a psychiatric condition that affects their mental ability
- a mental disability that prevents them from managing their affairs
- a mental disability as the result of accident or injury

The procedure for a guardianship application is different for children and adults. This section only deals with the guardianship of adults.

Are there different types of adult guardianship?

Yes. There are two types of adult guardianship: guardianship of the person and guardianship of the **estate**. Usually, the same person is appointed to do both jobs.

As a guardian of the person, you are responsible for making decisions about the incompetent person's personal care, living arrangements, and general welfare. You may also have power to consent to medical treatment for that person.

As a guardian of the estate, you are responsible for managing the incompetent person's property, that is, everything they own. This may include handling money to provide for care, arranging for an allowance, and managing investments.

Who can be a guardian?

A guardian must be 19 years of age or older and mentally competent. Usually the guardian is a relative or friend. A spouse or partner can be named as guardian. A trust company usually only agrees to be appointed as guardian of the estate to deal with the person's finances.

The public trustee only consents to be the guardian for a person's estate. It never consents to be appointed as guardian of the person. Getting the consent of the public trustee is not a simple or straightforward process. For more information, see the section *Public Trustee*.

Who appoints a guardian?

The guardian for an adult can only be appointed by a judge of the Supreme Court of Nova Scotia. Before appointing a guardian, a judge will hold a hearing to decide if someone is mentally incompetent and unable to manage their own affairs.

Can a guardian be appointed against a person's wishes?

Yes. If a judge is satisfied that a person is not able to care for and manage their affairs because of mental infirmity, a guardian can be appointed.

A person has the right to dispute an application for guardianship. They have the right to have a lawyer. If there is not money to afford a lawyer, they may qualify for legal aid.

For more information, see "What does a guardianship application cost?"

How is a guardian appointed?

The guardian for an adult is appointed by a judge. The legal process of applying for guardianship is set out in the *Incompetent Persons Act* and Nova Scotia Civil Procedure Rule 71.

A guardianship application takes time and is complicated and technical. This section only provides general information. If you want to apply for guardianship, you should talk with a lawyer.

Medical evidence

Before starting an application for guardianship, two medical doctors must examine the person.
They must each prepare a separate written statement giving an opinion about the incompetent person's present state of health.
This statement is called an **affidavit**.

Notice

The person is entitled to 14 days notice of the time and place of the guardianship hearing. Anyone caring for that person and any next-of-kin also gets 14 days notice. The judge may require other special notice requirements.

The notice must include copies of the two affidavits from the medical

doctors and a copy of the order that the judge is being asked to make for guardianship.

Order

A document must be prepared that a judge will sign to create the guardianship and to set out the terms of the guardianship. This document is called an order of the judge. It must contain certain details that your lawyer can explain to you.

Court Hearing

At the hearing, the judge will look at the application. Based on the information in the application, if the judge is satisfied that the person is not capable of taking care of themselves, the judge will appoint a guardian.

If there are problems with the documents or if there is any dispute over the application, the judge will decide how to deal with the matter.

Appeal

The judge's decision can be appealed to the Nova Scotia Court of Appeal. Before you decide to appeal, you should talk with a lawyer.

Are there protections if the guardian fails in their duties?

The court will require the guardian to purchase or arrange a **bond**, which is a type of insurance policy. There are two types of guardianship bonds: a personal bond and a **surety** company bond. The person(s) giving the bond are called the surety. A personal guardianship bond must have two sureties.

The surety guarantees to pay money or perform acts if the guardian fails in their duties. This protects the incompetent person and their heirs from any financial misconduct by the guardian.

The annual insurance premium for a surety company bond is paid out of the incompetent person's estate. If they are not able to pay the premium, the guardian is responsible for paying it. The two sureties in a personal guardianship bond are not paid a premium. They must have sufficient net worth to guarantee the bond.

If the value of the incompetent person's estate decreases, the guardian can go back to the court and ask for the amount of the bond to be reduced. The bond remains in force until the guardian provides the court with the final accounts for the estate and is discharged from their duties by the court.c

What are the responsibilities of a guardian?

The responsibilities of a guardian are set out in the I*ncompetent Persons Act*. A guardian must:

- file an inventory of all the possessions of the incompetent person
- account for the inventory
- pay all debts the incompetent person owes
- collect money owed to the incompetent person, represent them in suing for money owed, and provide releases for payments received
- obtain a licence from the court if they need to sell the incompetent person's land
- manage the incompetent person's estate without waste
- use the incompetent person's funds to provide suitable care for the incompetent person and their family

What is included in an inventory?

An inventory is a list of all the possessions of the incompetent person. This includes land, vehicles, investments, cash, jewellery, and other valuables. It must include a short description of each item of property, the value of each item, how that value was decided, and the total value of all property

What does it mean to account for inventory?

To account means the guardian must show what they have been doing with the incompetent person's estate. The law requires a guardian to account within one year after being appointed guardian, at the end of the guardianship, and at other times set by the judge.

A guardian must keep a written record of what the incompetent person owns when the guardianship starts, what is received and what is paid during the guardianship, and what remains when the guardianship is finished. At the end of the guardianship, the guardian must transfer whatever remains of the incompetent person's property to the people lawfully entitled. For example, if the incompetent person dies and has named an **executor** in their will, the guardian would transfer the remaining property to the executor.

For more information on what happens if a person dies without a will, or **intestate**, see the section *Wills*.

How does a guardianship end?

Guardianship ends when the incompetent person dies or regains competence.

A judge may end guardianship if the guardian is unable to carry out duties because they:

- are not fulfilling their responsibilities satisfactorily;
- have a mental or physical disability;
- move out of the province permanently;
- resign; or
- die.

If the incompetent person still needs a guardian, instead of ending the guardianship, the judge will remove the original guardian and appoint a new guardian.

What happens if an incompetent person regains competence?

If an incompetent person regains competency, they can apply to the court to have the guardian removed.

If you are a guardian and you learn that the incompetent person has regained competency, you must tell them how to go to court to end the guardianship.

The process for ending the guardianship requires medical evidence, notice, and a hearing. The person applying to end the guardianship must satisfy the judge that they are no longer mentally incompetent. If the application is successful, the guardian would have to account and return all remaining possessions to the person who has regained competency.

What does a guardianship application cost?

Some of the usual costs are:

- Court fees: These are paid when you make the application for guardianship.
- Lawyer's fees and expenses: These will vary with the particular lawyer and the type of case. Fees cover the time the lawyer spends meeting with you, getting affidavits from doctors and other witnesses, preparing the case, filing documents in court, and presenting the case in court. Usually, lawyers require payment of some of their fee (called a **retainer**) and expenses at the beginning of the process. Before you hire a lawyer, you should ask the lawyer for an estimate of the cost and how long the process will take.

- Incompetent person's opposition costs: These must be paid if the incompetent person objects to the guardianship application. They have the right to a lawyer. If there is not money to afford a lawyer, they may qualify for legal aid.
- Professional witness fees: You may need to pay for persons such as doctors, who may charge a fee to prepare an affidavit or come to court.

There are annual costs such as the surety bond premium. Usually these costs are paid from the incompetent person's estate. The law does not say who must pay these expenses if the incompetent person does not have the money, but likely the guardian will be required to pay costs the incompetent person cannot afford if they want guardianship of the incompetent person.

If there is not enough money to cover the surety bond premium, the guardian is personally responsible for paying it.

Guardian's fees: There may be ongoing fees for guardianship services. A trust company charges an ongoing fee for acting as a guardian. Any other guardian may also charge a fee. The Supreme Court sets guidelines for the payment of guardians. A trust company may negotiate higher rates. You should discuss any guardian fees with a lawyer.

Can I take care of someone's affairs without applying to court to be the guardian?

Yes. Sometimes when a person becomes incapable of managing their own affairs someone else will be able to manage them. This is usually done by the person's spouse, child, other close family member, or even a close friend.

Informal arrangements work for many people; however, there can be problems if the person has land or financial assets that need to be managed. For example, in an informal arrangement, you will not be able to deal with investments held only in the person's name unless they have appointed you as **attorney** in an **Enduring Power of Attorney**. For more information, see the section *Powers of Attorney*.

Are there alternatives to guardianship?

Yes. While you are still mentally competent, you can arrange for someone to manage your affairs. This legal document is called an Enduring Power of Attorney.

For more information, see the sections *Powers of Attorney* and *Health Care Treatment and Consent*.

Where can I get more information?

Public Trustee Office
PO Box 685
Suite 405, 5670 Spring Garden Road
Halifax, NS B3J 2T3
Tel. 902-424-7760 (not toll free)

Canadian Mental Health Association, NS Division
(offices at various locations throughout the province)
63 King Street
Dartmouth, NS B2Y 2R7
Tel. 902-466-6600
cmhans@eastlink.ca
www.novascotiacmhans.ca

Nova Scotia Department of Seniors
1740 Granville Street, 4th floor
PO Box 2065
Halifax, NS B3J 2Z1
Tel. 424-0065
1-800-424-0065 (toll free in NS)
whitevj@gov.ns.ca
www.gov.ns.ca/scs

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

Online information is available at the LISNS website at www.legalinfo.org.
Under "Legal Information,"
go to "Planning your Life."
Click on "Guardianship of Adults."

HEALTH CARE TREATMENT AND CONSENT

It is a good idea to think about who you want to make health care decisions for you when you are not capable of making these decisions yourself. Anyone could lose this ability, even temporarily.

LEGAL Information SOCIETY OF NOVA SCOTIA

Who consents for my health care treatments?

As long as you are able, you consent for your own health treatments. If you are mentally **competent** and have the **capacity** to give consent, it is your legal right to make health care decisions for yourself.

Who consents for me if I cannot?

You can appoint someone to consent for you. This person is legally called a **delegate**. Sometimes they are called a **proxy**.

Your doctor will ask your closest family member to consent for you if you are unable to consent and you have not appointed anyone to consent on your behalf. This would usually be your spouse, **domestic partner**, or **common law partner**. It can also be your next of kin or a parent.

The best way to be sure that your spouse, domestic partner, or common law partner will be allowed to give consent for you is to appoint them as your delegate.

The *Nova Scotia Hospitals Act* and *Personal Directives Act* allow a common law partner to give consent to health care when you are unable to consent if you have been living together as spouses for at least one year. Registering your common law relationship as a **domestic partnership** would make it easier for your partner to show that you were living together as spouses.

A relative or friend could apply to the courts to be appointed as your **guardian** in order to be able to give consent to health care for you. Before appointing a guardian, a judge must be satisfied that you are incapable of consenting and that it is in your best interests to have a guardian appointed. For more information, see the section *Guardianship of Adults*.

When there is no guardian or other person authorized to consent for you, the **public trustee** may be asked to give consent for you might agree to take on this task. For more information, see the section *Public Trustee*.

How do I appoint a delegate to consent for me in case I cannot?

You have to make a **personal directive**. In it, you may appoint any person who is at least 19 years old as your delegate. If you want to appoint your spouse or partner and they are not yet 19 years old, you can do so. A delegate must be mentally competent, and they do not have to be related to you.

Choose someone whom you can trust to carry out your wishes. You should discuss your wishes for your health care with your delegate.

Your directive must be in writing and signed by you. Your signature must be witnessed by a person who is not the delegate or their spouse.

You should name a back-up delegate in your directive in case your first choice is unable to act for any reason, even temporarily. They could be travelling in another country, and impossible to contact. In that case, your back-up could make decisions for you. Your chosen delegate could resume the role of delegate once they returned to the country or they could be reached.

If you left instructions for your care in the personal directive, those instructions would remain valid and would need to be respected if your delegate or back-up delegate could not be reached.

There are currently two types of directives in Nova Scotia. On April 1, 2010, a new law came into force called the *Personal Directives Act*. This act allows you to write a personal directive that authorizes a delegate to make decisions about your personal care. It is also called an **instruction directive**.

In it you set out instructions about your care and/or information about your values and beliefs to guide others making decisions for you. Among other things, your delegate can make decisions about health care, nutrition, dehydration, shelter, residence, clothing, hygiene, safety, comfort, recreation, social activities, and support services. Your delegate must follow any instructions you write in your personal directive unless they are illegal. There are exceptions, for example if you later expressed different wishes to those in your directive.

The second type of directive is a **proxy directive**. It authorizes someone else to make decisions for you when you become incapable of doing so. Before April 2010, the *Medical Consent Act* only allowed you to have a proxy directive. This meant you appointed a person as your decision-maker and you gave them authority to make health care decisions for you if you became unable to consent to treatment. In a proxy directive, you could set out your wishes for health care, but there was no legal requirement to follow your wishes. A proxy directive is also called an advance health care directive.

If you have a proxy directive under the *Medical Consent Act*, it is still valid. You may choose to also write a new personal directive under the *Personal Directives Act*.

How are personal directives different from euthanasia and assisted suicide?

The term **euthanasia** means an act taken by one person to end the life of another to relieve that person's suffering. The term **assisted suicide** is the act of intentionally killing oneself with the help of another person. Both euthanasia and assisted suicide are illegal in Canada.

A personal directive only allows your delegate to make decisions that you would be legally allowed to make if you were still capable of giving consent.

You can write a personal directive that requests your delegate refuse to give consent for treatments that would prolong your life. But you cannot request that they authorize active steps to end your life.

Do I have to appoint a delegate?

No. But if you choose not to have a directive, you should discuss your medical and health care wishes with your family and your doctor. If more people know about your wishes, it will be easier for them to make decisions for you if you are unable to consent.

If you do not have a directive, the hospital or other care provider will first look to see if a court has appointed a guardian. For more information, see the section *Guardianship of Adults*.

If there is no guardian, the hospital or other care provider will find an adult who can give consent by law. This person is called a "statutory decision-maker." This person must have been in personal contact with you over the past year and be willing to act on your behalf. Care providers must work their way through the following list in this order:

- Spouse (includes married, common law and registered domestic partner)
- Child
- Parent
- Person who stands in the place of a parent
- Brother or sister
- Grandparent
- Grandchild
- Aunt or uncle
- Niece or nephew
- Other relative
- Last resort, the Public Trustee Office

Who should I talk to when writing my personal directive?

You don't have to talk to your lawyer when you write your personal directive, but it is a good idea. Your lawyer can ensure that your directive meets all the legal requirements.

Talk with your doctor when writing your directive, so that you can decide which treatments would work best to achieve the results you want. Your doctor can explain the different treatment options available and provide the best instructions to deal with your particular needs. Without medical advice, you may not be able to give the instructions that will provide the results you want.

How specific should my health care instructions be?

Your directive should be clear and detailed. Try to avoid broad statements that might reduce the options available for your treatment. For example, if you say you do not want to be given any medication, you might be ruling out a simple treatment that could ease your pain or help you overcome minor ailments during your illness.

It is important to write down your values and beliefs in your personal directive as a way to assist in interpreting instructions and helping a delegate.

Advance planning is important for all stages of life. Personal directives are important for ensuring the decisions you would want are made in times of temporary incapacity such as following a car accident that leaves you unconscious for a week. They are also intended for permanent incapacity such as a brain injury where you may live in the community for many years with assistance. And they are intended for use at the end of your life. A personal directive helps you obtain the level of comfort and care you want.

Where should I keep my personal directive?

You should give your doctor a copy of the directive to keep in your medical file. You could also give a copy to your delegate and to your close family members.

Keep the original at home in a special place, and tell people where it is. Do not put your directive in a safe deposit box that is in your name only as your delegate will not have access to it. Although people who have been given copies of your directive may not require the original, it is a good idea for your delegate to be able to produce the original directive if needed. For example, there could be a situation where the

copy you provided cannot be located and an unfamiliar medical staff person insists on seeing the original. It is a good idea to keep a list of people who have copies of your personal directive with the original. If you are travelling, take a copy of your directive with you. If you are admitted to a hospital or continuing care home, take a copy with you.

How often should I update my personal directive?

Advances in medical knowledge and technology are constantly bringing new ways to treat diseases and injuries. It is important that you review your directive with your doctor to make sure you have accounted for new treatment methods and technology. If you have a specific illness or condition, you should review your directive more frequently to make sure you keep up to date on treatments.

Organizations that deal with specific diseases or illnesses (for example, cancer, AIDS, or Alzheimer's disease) may be good resources for information about new treatments and advances in care. They are also helpful in providing support and ways of helping you and your family cope with the illness.

You can always ask your doctor or your medical specialist for more information, or you can go online. If you get information online, check to be sure that it comes from a reliable source.

You also might want to update your personal directive when you get married, remarried, or divorced. If your delegate or back-up dies, or becomes unable to consent, you should update your directive.

Will my personal directive be valid outside Nova Scotia?

The legal requirements for directives are provincial. The law about directives is not the same outside of Nova Scotia. If you become unable to consent while you are outside the province, your directive might not be followed if it does not meet the requirements of the law in the province or country you are visiting.

Before travelling, you should review your directive and get advice from your lawyer to be certain that it will be followed if you are unable to consent to treatment while you are out of the province. If you are living outside Nova Scotia for an extended time, you may want to do an additional directive that will be valid where you are living.

What should I do if I'm asked to sign a standard personal directive form?

Some health and residential care facilities have standard directives that they ask all patients or residents to sign when admitted. These directives may contain instructions that you would not want such as a "blanket" do-not-resuscitate order. You do not have to sign this standard form, and you cannot be refused treatment or admittance for refusing to sign it. The *Personal Directives Act* states that it is against the law to require a personal directive.

If you are given a standard form, you should review it with your doctor before deciding whether to sign it. You may also want to show it to a lawyer. Do not sign a standard directive form if it would not give you the health care results you want. Instead, you should discuss your health care wishes with your family. You may want to draw up your own directive if you don't already have one.

In order to care for the needs of the patients or residents they serve, many facilities will ask you if you have a personal care directive. You should provide a copy for their files.

Can I cancel a personal directive?

Yes. If you have the capacity, you can change your mind at any time. To cancel or **revoke** a directive made under the old *Medical Consent Act*, you can make a new personal directive. But you don't have to write a new directive to cancel the old one. You should tell your delegate that you have cancelled your directive.

There is no process for cancelling a personal directive under the *Personal Directives Act*. You should destroy all copies of the old directive to avoid any confusion, and make a new directive if you want to. You can also declare your intention to cancel your personal directive in writing, and have it signed and witnessed.

You should tell your doctor, hospital, or health care facility about the cancellation and get back any copies you gave them. It is important that you let them know that you have changed your mind, whether or not you decide to make a new directive. You will also want to tell your family members.

If you decide to make a new directive, then you should include a clause revoking the old directive. Give a copy of any new directive you make to your doctor. You could also give a copy to your delegate and to your close family members. Make sure that everyone you want has copies of your most current wishes.

Where can I get more information on Personal Directives?

Nova Scotia Department of Justice
5151 Terminal Road
P.O. Box 7
Halifax NS B3J 2L6
Phone: (902) 424-4030
Email: justweb@gov.ns.ca

Nova Scotia Department of Health
PO Box 488
Halifax NS B3J 2R8
Street Address:
Joseph Howe Building
1690 Hollis Street
Halifax NS
Phone: 1-902-424-5818
1-800-387-6665 (toll-free in Nova Scotia)
TTY/TDD: 1-800-670-8888
Email: DoHweb@gov.ns.ca

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

LISNS also has online information at www.legalinfo.org.
Under "Legal Information,"
go to "Planning your Life."
Click "Advance Health Care Directives."

Notes

POWERS OF ATTORNEY

By writing a Power of Attorney, you can give another person authority to act on your behalf in case you are sick or become unable to make decisions about your health care or finances.

LEGAL Information
SOCIETY OF NOVA SCOTIA

What is a Power of Attorney?

A **Power of Attorney** is a legal document that lets you give another person authority to act on your behalf during your lifetime.

If you are giving someone power of attorney, you are called the **donor**. The person you are giving power of **attorney** to is called the attorney (even if they are not a lawyer).

The law does not require you to prepare a Power of Attorney document. But it is a way for you to choose who will act for you if you are unable to do so. It has no legal effect after your death.

Note: "Power of Attorney" is the document. The power you give to an attorney is written in lower case letters, as in "power of attorney."

If I have given someone my power of attorney, can I still act on my own behalf?

Yes. If you give someone your power of attorney, you can still make your own decisions until you become unable to do so.

What is an Enduring Power of Attorney?

An **Enduring Power of Attorney** is a special Power of Attorney document that clearly says that the authority to act on your behalf continues even if you become mentally **incompetent**.

A Power of Attorney that is not an Enduring Power of Attorney will become invalid and cannot be used if you become mentally incompetent. In that case, a **guardian** may need to be appointed to handle your affairs. For more information on adult guardians, see the section *Guardianship of Adults*.

Should I have an Ordinary Power of Attorney or an Enduring Power of Attorney?

The kind of Power of Attorney document you have depends upon your needs. Every situation is different, so you should speak with a lawyer about what is best for you in your situation.

If you want the person named in your Power of Attorney to be able to continue to act if you become mentally incompetent, then you will need to have an Enduring Power of Attorney.

If you already have an **Ordinary Power of Attorney**, talk with your lawyer about whether you should replace it with an Enduring Power of Attorney.

What is Springing Power of Attorney?

A **Springing Power of Attorney** is a specialized Enduring Power of Attorney document which states at what point it will "spring" into effect (such as when a certain event happens).

A Springing Power of Attorney is most often used by business owners. If something unexpected happens to a business owner, they need to have someone else authorized to run the business. The person given this authority has springing power of attorney.

Most individuals do not need a Springing Power of Attorney. If you think you do, you should talk to a lawyer about your needs.

Why should I write a Power of Attorney?

There are many reasons to do a Power of Attorney such as:

- You are too ill to deal with your affairs and you need someone to take over control for you until you get better.
- You are not able to get around very well and you want to authorize someone to make deposits to and withdrawals from your bank account.
- You are travelling or working away from home and you want to give someone authority to deal with your affairs while you are away.
- You have an illness that will reduce your mental or physical mobility in the future, and you want to arrange now for that future need.
- You want to make arrangements now while you are well and competent, in case something unexpected takes place (such as an accident), that might limit your ability to deal with your affairs or to get around.

What can happen if I do not have an Enduring Power of Attorney?

If you do not have an Enduring Power of Attorney, and you become mentally incompetent and unable to take care of your affairs, a relative or friend may ask a court to appoint a guardian to handle your affairs. This might not be the person that you would have chosen to handle your affairs.

For more information, see the section *Guardianship of Adults*.

How much authority can I give in a Power of Attorney?

You can give your attorney two levels of responsibility:

a) A **general power of attorney**: this gives your full authority to your attorney. There are no limits on what they can do on your behalf.

b) A **specific power of attorney:** this says exactly what authority you give to your attorney. It limits what he or she can do on your behalf.

A specific power of attorney is most often used in a situation where you need someone to sell a piece of land for you or to deal with a particular bank account for you. It is important for a specific power of attorney to include all steps involved in the work you want done, so the attorney can complete the work.

What duty does my attorney have?

Your attorney has a duty to take good care in carrying out what you have authorized them to do. This duty includes:

- to stay within the authority you have given
- to use reasonable care and skill
- to act in your best interests
- not to profit personally from what is done for you

What are the risks of giving someone my power of attorney?

Power of attorney gives someone else power to act for you. Most people who are appointed under a Power of Attorney are honest. They try to do a good job and live up to their obligations.
There is a risk that the attorney could abuse that power because they:

- believe that they know what's best for you, even if you don't agree; or
- want to get money or property for themselves.

Banks and other financial institutions rely on the written Power of Attorney document. If you give your attorney power to withdraw cash from your bank accounts, to deal with your property, or to buy and sell investments on your behalf, the bank will not usually contact you to find out if you approve of what the attorney is doing.

What can I do to prevent misuse of a power of attorney?

Here are some things you can to help prevent abuse of a power of attorney:

- Choose someone you can trust who will respect your wishes to be your attorney.
- Continue to pay attention to your affairs. Ask your attorney questions. Insist upon seeing regular statements. Do not give up all

control to that person.

- Ask your attorney to give you (or someone else if you become incompetent) regular updates on how they are managing your affairs.
- If you have a lot of savings, property, or investments, consider appointing a lawyer or a trust company to act on your behalf. Look carefully into the costs of this before you make a decision.
- Give a specific rather than a general power of attorney, unless your circumstances require that you give your full authority. For example, if you only need your attorney to deal with one bank account, then only give them power to do that.
- Check your bank statements and cancelled cheques carefully. You can put a limit on the amount that your attorney can withdraw from your accounts. If the attorney wants to withdraw more than that amount, then you would have to let your bank know that you agree.
- If you have investments, arrange for your investment dealer to keep you informed about all dealings. You can also arrange for them to inform a third person if you become incompetent.
- Make a list of your property, jewellery, savings, furnishings, and investments. Keep it up to date. Give a copy to the person named in your Power of Attorney and to at least one other person you trust.
- Tell your banks, financial institutions, and investment dealers to tell you of any transfers of funds and transactions over a certain limit.

What are the legal requirements of an Ordinary Power of Attorney?

The legal requirements are:

Adult: In Nova Scotia, you must be aged 19 or older in order to:

- give a power of attorney.
- act as attorney under a Power of Attorney.

Capacity: You must be mentally **competent** to make a Power of Attorney. This is also called "having legal capacity." You must be able to understand what it means to give a power of attorney.

Legal capacity is often an issue with people who have a mental infirmity or who are very ill. The mental capacity of someone who is very ill may be affected by the illness, drugs or pain. You should make

your Enduring Power of Attorney while you are in good health to avoid having your mental competence questioned.
The person who is named as an attorney under a Power of Attorney must understand what it is to receive a power of attorney.

Written: Your Power of Attorney must be in writing.

Signed: Your Power of Attorney must be signed by you.

Is there anything else I should include in an Ordinary Power of Attorney?

The following are not legal requirements but they are a good idea:

- Put the date on the document.
- Initial and number each page so pages cannot be replaced or removed.
- Have your signature witnessed by someone who is a competent adult (not the attorney and not the attorney's spouse). Have that person sign their name on the document. The witness does not need to know what is stated in your Power of Attorney.
- Arrange for the witness to swear an **Affidavit of Execution**. (See the next question for more information.)

What is an Affidavit of Execution?

An Affidavit of Execution is a statement sworn by a witness in which the witness confirms that he or she saw you sign the Power of Attorney.

Although it is not a legal requirement to do an Affidavit of Execution for a Power of Attorney, it is common practice. If the Power of Attorney needs to be recorded at the Land Registration Office, you will need an Affidavit of Execution.

Affidavit of Execution is a combination of two legal terms. An **affidavit** is a statement that is sworn before a **Commissioner of Oaths** or a **Notary Public**.

The word **execution** is a legal term for the formal signing of a legal document before either a Commissioner of Oaths or a Notary Public.

All lawyers are Notary Publics and Commissioners for Oaths as well as lawyers. But you do not have to be a lawyer to be a Notary Public or Commissioners for Oaths. You can find Notary Publics and

Commissioners for Oaths in the Yellow Pages.

For more information on recording your Power of Attorney at the Land Registration Office, see:

Can my attorney deal with land?

Does my Power of Attorney have to be recorded with the province of Nova Scotia?

Are there special requirements for an Enduring Power of Attorney?

Yes. In addition to the legal requirements for an Ordinary Power of Attorney, an Enduring Power of Attorney has two special requirements:

- It must be witnessed by someone who is competent and at least 19 years old who is not the attorney and who is not the attorney's spouse.
- It must state that it is to continue to be effective in the event of the legal incapacity of the donor.

These special requirements are set out in the Nova Scotia *Powers of Attorney Act*.

Does the person receiving the power of attorney have to sign the document?

No. But if they are to have access to any of your bank accounts, you will need to arrange to have them sign at the financial institutions where you have those accounts. Each bank, **trust company**, and credit union will need their signature. The institution will also have its own forms for you to complete.

Do I need a lawyer to write a Power of Attorney?

No. The law does not say that a lawyer must write your Power of Attorney. You can make up your Power of Attorney yourself. You can fill in a blank form that you can buy from a store or download from the internet. There are also books and kits available for Powers of Attorney.

It is wise to get legal advice from a lawyer about making a Power of Attorney, even if you do not want the lawyer to write it for you. A Power of Attorney is an important legal document and it must be worded carefully to make sure that it says what you want. In the unlikely event that a lawyer who draws up a Power of Attorney makes a mistake, there is insurance to cover the situation.

Among other things, a lawyer can:

- make sure the Power of Attorney is clear about the amount of authority you are giving to your attorney
- make sure that your Power of Attorney covers all the steps necessary for your attorney to do what you want done
- make sure the Power of Attorney meets all the legal requirements
- tell you about a number of standard **clauses** that can be included in a Power of Attorney to provide for unforeseen events
- tell you about options for wording the Power of Attorney
- tell you about things you can do now to make it easier for your attorney to deal with your affairs
- answer your questions about how your attorney might use the Power of Attorney to take care of your affairs
- help you understand the legal consequences of giving a Power of Attorney
- provide proof from their meetings with you that that you had legal capacity and that your Power of Attorney was made voluntarily, by your own free choice, and free of undue influence

If you decide to write your own Power of Attorney, you should have a lawyer look it over to make sure that it meets all the legal requirements and that it gives your attorney the authority you want to give.

It is very important to get advice from a lawyer if you want to have a specific or a Springing Power of Attorney to ensure that these documents are written to meet your individual needs.

What does it cost for a lawyer to do a Power of Attorney?

Lawyers charge a fee based upon the amount you want them to do. For example, you may want the lawyer to look at a Power of Attorney you have prepared or you may want them to prepare the Power of Attorney for you. The fee depends on how complex the work is. You should discuss fees with the lawyer before you decide to hire them.

Do I have to pay the person named in my Power of Attorney?

That depends on whether you have appointed a relative, friend, lawyer or trust company as your attorney.

A friend or relative is not entitled to any fee unless there is an agreement between the two of you for payment. In that case, you should include the terms of payment in the Power of Attorney document. Often a family member or a friend acts as an attorney without payment.

If a lawyer is acting under a power of attorney and is doing legal work for you, such as purchasing property or drawing up a will, they will charge a fee for doing this work.

A trust company will charge a fee for acting as your attorney. The fee is based on the value of your estate and your income.

No matter who you pick, your attorney is entitled to be compensated for any out-of-pocket expenses such as postage and parking.

Can my attorney use my bank account?

Yes, if you include that authority in your Power of Attorney. Banks and other financial institutions generally need your attorney's signature for their files. Most have their own Power of Attorney forms which they will want you to sign. These forms can only be used to deal with that particular financial institution. They cannot be used to deal with other banks or financial institutions or to deal with your other general affairs. You should ask your bank or credit union if they have any special requirements.

Carefully read any form you are given before you sign it. It may limit an attorney's powers to deal with particular accounts or it may include power to deal with all accounts, investments, and safe deposit boxes held by you.

You can talk with the staff at the financial institution about your needs. If you do not understand all of the terms, you can ask them or ask a lawyer.

Can my attorney do my taxes?

Yes, but usually only if you include a special clause in your Power of Attorney that permits them to deal directly with the Canada Revenue Agency on your behalf.

Can my attorney deal with land?

Yes, if you give your attorney that authority in your Power of Attorney. If your Power of Attorney allows your attorney to deal with land, it must be recorded at the Land Registration Office in the district where the land is located before the land transaction can be completed. The Power of Attorney must be signed under seal and have an **Affidavit of Execution**.

There is a fee to record documents. Fees change from time to time. You should speak with staff at your local Land Registration Office to get information on current fees.

The phone number for your local office is listed in the blue Government pages of the phone book under "Land Registration." There is a toll free number that you can call: 1-866-518-4640. You can also get at www.gov.ns.ca/snsmr/offices.asp.

Can my attorney consent to medical treatment for me?

Yes, if you give them authority to do so. The Nova Scotia *Personal Directives Act* also lets you give a person authority to consent to medical treatment on your behalf if you become mentally or physically incapable of giving consent. The person you authorize to consent on your behalf is generally called your delegate. The consent can be included in your Enduring Power of Attorney document or it can be a separate document called a **personal directive**.

If you decide to include medical consent, your Power of Attorney must be in writing, signed by you, and witnessed. The witness cannot be the delegate or the delegate's spouse. Both you and your delegate must be at least 19 years of age and must be mentally competent.

For more information, see the section *Health Care Treatment and Consent*.

Where should I keep my Power of Attorney?

You should put your Power of Attorney document in a safe place. A fire-proof location is the best place.

If you want your attorney to start using the power immediately, you should give it to them. Keep a copy for yourself in a safe place. You should give a copy to any financial institutions and to any other parties that your attorney will be dealing with on your behalf. Keep a list of the businesses and people to whom you give a copy of your Power of Attorney, in case you have to tell them of any changes.

If you have a Power of Attorney that may not be used for awhile, perhaps never:

- Put it in a safe place that your attorney knows about, which they can access quickly, if necessary.
- Leave it with a trusted third party, such as a lawyer, and give clear instructions about when to release it.
- Give it to your attorney to keep in a safe place until it is needed.

Do not put your Power of Attorney in a safe deposit box that is in your name only, as your attorney may not be able to get access to it.

It may be many years before your Power of Attorney is needed, if it is ever necessary. Meanwhile, the person storing your document may move away or die.

As time passes, keep track of where your Power of Attorney is being kept. Make sure you tell your attorney where the document is stored so that they can find it if it is needed. You should make sure that the people in your life who need to know about your Power of Attorney also know where to get it when it is needed.

How does a power of attorney end?

You can end a power of attorney at any time and should do so if your attorney is abusing the power you have given them.

Notice by the donor: You may cancel a power of attorney by giving notice to the attorney. The notice must be in writing, dated, and signed by you.

If you cancel your power of attorney:

- write to all the people and businesses who dealt with the attorney on your behalf to tell them that the power of attorney has been cancelled. Keep a copy of the letters.
- ask everyone who has a copy of the document to return it to you. Banks and some other organizations may need to keep a copy of the document for their files.
- contact the Land Registration Office if the Power of Attorney is registered there so you can find out what needs to be done to put notice of your cancellation on the record. You do not need to do this if the power of attorney has already ended because it was for a specific time period or for a task that has been completed.

You should give written notice when a power of attorney is cancelled or when an attorney's authority is ended. Any person or business that deals in good faith with the attorney can rely on the Power of Attorney if it does not know that the document has been cancelled.

Notice by the attorney: Your attorney can give you notice that they no longer want to act as your attorney. If that happens, you should write to all the people and businesses who dealt with the attorney on your behalf, to tell them that the attorney no longer has your authority. Keep a copy of the letters. Ask your attorney to return the Power of Attorney to you.

You should always name a back-up attorney in your Power of Attorney in case your first choice is not able to act for any reason. If you do this, your back-up attorney takes over authority to act on your behalf and your Power of Attorney document remains effective. If you have not named a back-up attorney, your Power of Attorney document will have no legal effect after your attorney has given you notice that they no longer want to act for you.

Mental incompetence: If you become mentally incompetent, your Power of Attorney is automatically cancelled unless it is an Enduring Power of Attorney.

If your attorney becomes mentally incompetent and you have not named a back-up attorney, your Power of Attorney is automatically cancelled. This is the case whether it is an ordinary or an Enduring Power of Attorney.

In some situations, when the **public trustee** is acting for a person who becomes mentally incompetent, the public trustee will continue to act on behalf of that person. (For more information, see the section *Public Trustee*.)

Death: When you die, your power of attorney is cancelled.

If your attorney dies and you have not named a back-up attorney, your power of attorney is cancelled.

If the public trustee is acting on behalf of a person who dies, they will continue to act until a court appoints someone to administer the estate if the person did not leave a will naming an executor. (For more information, see the section *Public Trustee*.)

Bankruptcy: If you become bankrupt, a **Trustee in Bankruptcy** takes over all your financial affairs and your power of attorney is cancelled. They administer the affairs of a bankrupt person.

If your attorney becomes bankrupt, your power of attorney is not automatically cancelled. It is only cancelled if the bankruptcy makes your attorney unfit to carry out their duties.

If bankruptcy makes your attorney unfit to carry out their duties, your back-up attorney, if you named one, would take over authority to act on your behalf and your Power of Attorney document would remain effective.

Time: A Power of Attorney document can be for a specific time or task. When the time or task is complete, the power of attorney ends.

For example, you might give someone a specific power of attorney to complete the sale of a house. The attorney's authority under that document would end when the sale of the house is completed.

In another example, you might give a general power of attorney while you are away on vacation. The attorney's authority under that document would end when you return home.

Can the person I choose as my attorney decide not to act?

Yes. Before you write your Power of Attorney, you should ask the person you want as your attorney if they are willing to take on the job. If they refuse, you can appoint someone else. You should also ask a back-up attorney.

If you do not name a back-up attorney, your attorney will automatically be cancelled if your attorney gives you notice that they no longer want to act as your attorney.

Is a Power of Attorney made outside of Nova Scotia valid here?

The legal requirements of powers of attorney are provincial. Your Power of Attorney may be valid if it was made outside Nova Scotia. To find out for sure, you should have it checked by a Nova Scotia lawyer to see if it meets the requirements of the law here.

Is my Power of Attorney valid outside of Nova Scotia?

If your attorney may need to use the power of attorney outside of Nova Scotia, you should check with a lawyer to see whether you should draw up a separate Power of Attorney for that province or country. For example, if you and your spouse spend the winter in Florida and you have given each other power of attorney, it would be wise to get legal advice as to whether your Powers of Attorney meet the laws of Florida.

Does my Power of Attorney have to be recorded with the province of Nova Scotia?

No. A Power of Attorney only has to be recorded when it gives authority to deal with land. Then it must be recorded at the Land Registration Office where the land is located.

What can I do if my attorney misuses my power of attorney?

There are a number of things you can do, depending on your situation and on your relationship with your attorney:

- At the very least, talk over your concerns with a lawyer or someone else you trust.
- Ask your attorney to account for how they have managed your affairs.
- You can cancel their authority under your Power of Attorney and use your back-up attorney. If you did not name a back-up attorney, you could cancel the Power of Attorney.
- It is a criminal offence to misuse a power of attorney. If your attorney is using your property or money for their own benefit without your consent, you should talk with a lawyer and the police.
- If you have an Enduring Power of Attorney and later become **incompetent**, your attorney can be required to account for how they have managed your property. The application would be made to the Supreme Court of Nova Scotia by someone who believed that your attorney was abusing their power. The court could order the attorney to account to the public trustee. The court can also remove the attorney and appoint someone else to manage your affairs.
- An attorney can voluntarily give an accounting to the Public Trustee Office.

Under the *Adult Protection Act*, if an attorney or guardian is neglecting the adult's property or dealing with it in a way that is not in their best interests, or if an adult is in need of protection, a judge may inform the public trustee. (For more information, see the section *Public Trustee*.)

Where can I find more information on Powers of Attorney?

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

LISNS also has online information at www.legalinfo.org.
Under "Legal Information,"
go to "Planning your Life."
Click "Power of Attorney."

PUBLIC TRUSTEE

The Public Trustee Office is an independent provincial office that has the authority to manage the financial and health care needs for certain people when no one else is willing, suitable or able to act.

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What is the public trustee?

The Public Trustee Office is a provincial office that has authority to act for people in certain situations. The Public Trustee Office is set up under a special Nova Scotia law called the *Public Trustee Act*.

The act authorizes the public trustee to act as guardian, custodian, or **trustee** of a person who is unable to care for their own affairs. It also authorizes the **public trustee** to act as executor or administrator of the estate of a person who has died.

What is an estate?

An **estate** is everything that a person owns. It includes land, vehicles, investments, cash, jewellery, and furniture. A person's estate is often referred to as **property**.

What is a guardian?

A **guardian** is someone who has legal responsibility for the personal or financial interests of another person. Generally, you apply to a judge for **guardianship** of a person who is mentally incapable of caring for their own interests. (For more information, see the section *Guardianship of Adults*.)

What is a custodian?

A **custodian** is someone who has legal responsibility to care for something and keep it safe. In the case of the Public Trustee Office, this might happen when the land or possessions of a missing or deceased person need to be located and protected.

What is a trustee?

A **trustee** is a person appointed by court **order** or other legal document to hold and manage something for the benefit of another person, for example, property. The public trustee may consent to be appointed as a trustee, for example, to manage insurance proceeds or a court settlement for a minor.

What is an executor?

An **executor** is someone named in the will of a person who has died. The executor is responsible for seeing that everything is handled properly. They gather assets of the deceased, pay debts and taxes, and distribute the remaining money and property according to instructions in the will.

The court uses the general term **personal representative** for a person appointed as an executor. (For more information, see the section *Wills*.)

What is an administrator?

When a person dies without a will, there is no executor to see that everything is handled properly. Or sometimes a will does not name an executor, or none of the executors named in a will are able to act. In these cases, someone needs to fill the executor's role and see that everything is handled properly. This person is called an **administrator**.

The court uses the general term personal representative for a person appointed as an administrator. (For more information, see the section *Wills*.)

When does the public trustee act?

The public trustee often acts when no one else is able to take responsibility for a person's estate.

The public trustee may be contacted by a social worker at Adult Protection Services about an adult (someone over 18 years of age) who is not mentally capable of managing their financial affairs. The public trustee will investigate the situation. If the public trustee learns that no one is appointed in an **Enduring Power of Attorney**, or no one is appointed by the Supreme Court to act as guardian of the finances of the mentally **incompetent person**, the public trustee may act as the financial trustee of that person.

The public trustee may also apply to the Supreme Court to be appointed as guardian of the finances of an incompetent adult. Before the Supreme Court will appoint anyone to be a guardian, the Court must have medical evidence that person is mentally incompetent. The public trustee is authorized by the *Hospitals Act* to give medical consent for a mentally incapable person if there is no one else who can do this. If a patient in a hospital is examined by a doctor and the doctor finds that person is mentally incapable of giving consent for treatment, the doctor will try to find out if the patient has appointed someone to give medical consent. If the patient has not appointed anyone, the doctor will speak with family members. The *Hospitals Act* lists which family members may be asked to give **medical consent**. If no one is available or willing to give medical consent for the patient, the hospital contacts the public trustee.

The public trustee carefully reviews the medical request for treatment. If treatment is in the best interests of the patient, the public trustee will give medical consent. In making its decision, the public trustee will try to learn if the patient has ever expressed any wishes concerning the medical treatment, and the public trustee will try to make a decision that respects these wishes.

The public trustee is also authorized in various situations to apply to the **Probate** Court to be appointed as the administrator, or personal representative, of a deceased person's estate.

Also see the sections *Health Care Treatment and Consent*, *Powers of Attorney* and *Guardianship of Adults*.

What does the public trustee cost?

The public trustee is able to charge the same costs and fees as a lawyer. Often a judge will set the amount of costs and fees payable to the public trustee. Generally, the fee for services provided is based on a percentage of the value of the person's estate and is set out in the regulations under the *Public Trustee Act*.

Usually a judge orders that the costs and fees of the public trustee be paid from the estate of the person. Sometimes a judge will order that another person, who may or may not be directly involved in the process, pay the costs and fees of the public trustee. The accounts of the public trustee are audited every year.

How do you know when you should contact the public trustee?

The public trustee has many different responsibilities. If you think there is a situation that requires the public trustee to act, you should talk to a lawyer about the situation and the responsibilities of the Public Trustee Office. You could also contact the office directly.

Where can I get more information about the public trustee?

You can get further information about the work of the Public Trustee Office online at www.gov.ns.ca/just/public_trustee.asp.
You can also call, write, or make an appointment to visit the Public Trustee Office:
Public Trustee Office
Suite 405, 5670 Spring Garden Road
Halifax, Nova Scotia
B3J 2T3
Tel: (902) 424-7760

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

LISNS also has online information at www.legalinfo.org.
Under "Legal Information,"
go to "Planning your Life."
Click "Public Trustee."

Notes

WILLS

Writing a will is a good idea. It is the best way to make sure that the things you own end up in the right hands after your death.

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What is a will?

A **will** is a legal document that lets you say what you want done with your possessions after you die. It also lets you say who you want in charge of carrying out your wishes.

A person who makes a will is called a **testator**. Your **estate** is all of the possessions you own when you die. This includes many things such as real estate, jewellery, artwork, clothing, and furniture. Whoever is in charge of carrying out your wishes is called your **executor** or your **personal representative**.

A will has no legal effect until you die.

Do I have to make a will?

No. The law does not require you to make a will.

Why should I make a will?

There are many reasons to make a will. A will allows you to:

- deal with your possessions the way you want
- name who has the authority to carry out your wishes
- name who you want to care for any dependent children
- provide for anyone who is dependent upon you
- save money and time by stating your wishes
- have peace of mind in knowing you have said what you want done
- help your family and friends handle your affairs after you die
- reduce the stress and strain on your family and friends
- reduce uncertainty and confusion about your wishes

Should I make a will if my spouse or partner has a will?

Yes, especially if you own anything on your own and if you want someone specific to inherit it. This includes items of sentimental or personal value such as keepsakes or pets. You might die before your partner or spouse, or you could die at the same time in an accident. A will is the best way to let your wishes be known.

You can each have a will that mirrors the other's will. They are separate wills but have identical terms.

What happens if I die without a will?

If you die without a will, you are said to die **intestate**, and the rules set out in the Nova Scotia *Intestate Succession Act* must be used to decide who gets your estate:

- Your property is distributed to the people considered to be your nearest relatives as listed in the act. There is no flexibility. The distribution may be different from what you would want.
- **Common law partners**, including same-sex partners, are not included on the *Intestate Succession Act* distribution list unless they have a **registered domestic partnership.** They are covered from the date they registered the partnership.
- If common law or same-sex spouses did not have a registered domestic partnership, the surviving spouse may have to go to court to get financial support or to make a claim on the estate.
- Children are included in the *Intestate Succession Act* distribution list.
- There will be extra steps in the process of settling your estate, which can mean additional costs and delays. This may add to your family's pain and distress. It will also mean that there will be less left to distribute.
- Family members may disagree and argue about how you intended to distribute your property.
- Someone will have to offer to look after your estate. The person must apply and be appointed by a court as an **administrator** or a personal representative. That person may not be someone you would have chosen.
- If you and your spouse die at the same time or if you are a single parent when you die and you have not chosen anyone to care for your dependent children or dependent grandchildren, someone will have to offer to take over this responsibility. The person responsible for your children or grandchildren is said to be their **guardian**. A person must apply to be guardian and be appointed by a court. That person might not be someone you would have chosen.
- If the court appoints a guardian to look after your children, it will also often state the terms of the **guardianship**. Those terms might not be what you would have chosen.

The law about **intestacy** also applies if you do not deal with all your property in your will. In this case, you are said to die partially intestate. The part of your estate not covered in your will is distributed according to the *Intestate Succession Act*.

What are the legal requirements of a will?

The legal requirements of a will are set out in the Nova Scotia *Wills Act*. Your will must meet all the legal requirements; otherwise, it will not be valid. The legal requirements include:

Age: In Nova Scotia, you must be aged 19 or older to make a will. There are a few exceptions. For example, a person under 19 can make a will if they are or were married.

Capacity: You must be mentally **competent** to make a will. This is also called "being of sound mind." When talking about wills, this is most often called having testamentary capacity. To have **testamentary capacity**, you must:

- know that you are making a will and understand what a will is
- know what property you own
- be aware of the persons (such as a spouse and children) you would normally feel you should provide for.

You must have testamentary capacity at the time you make your will. If you become mentally incompetent after you made your will, the will is still valid.

Testamentary capacity is often an issue with persons who have a mental infirmity or who are very ill. The mental **capacity** of someone who is very ill may be affected by the illness, drugs, or pain. You should make your will while you are in good health to avoid having your mental capacity questioned.

Knowledge: You must know and approve of the contents of your will. The will may be invalid if you were misled by fraud or simply by accident. It may also be invalid if someone put an inappropriate amount of pressure on you, known as "undue influence."

Written: A will must be in writing, but it need not be typed. It can also be handwritten or printed. A videotape, an audio recording, and any other way of communicating your wishes are not considered to be valid wills.

Signature: Your will must be signed at the end by you. You must sign the will before two witnesses who must be present at the same time, unless it is a **holograph will**. If you are unable to sign the will, you can ask someone to sign it for you in your presence. You must tell the two witnesses that the will is yours.

Witnessed and signed by two other people: Your will must be signed by two witnesses in your presence and in the presence of each other. The witnesses must be at least 19 years old and must not benefit from the will or be married to someone who benefits. The witnesses do not need to know what your will says.

What is a holograph will?

A **holograph will** is a handwritten will that is written and signed by the testator but not witnessed. Before August 19, 2008, holograph wills were not valid in Nova Scotia. Then the law was changed, and a holograph will made after that date is now legal. (The courts have ruled that a holograph will made before that date is not valid.) If you have a holograph will, it is best to check with a lawyer to make sure it's valid.

Do I need a lawyer to make a will?

No. The law does not say that a lawyer must write your will. You can write your will yourself, fill in a blank form of a will that you can buy from a store, or download a blank form from the internet. There are also books and kits available about doing wills.

A will is an important legal document, so it is a good idea to get legal advice about making a will even if you do not want the lawyer to write your will. If you feel that a family member or other person is pressuring you to leave money or property to them in your will, you can talk to a lawyer about this.

If you are concerned that your spouse or someone who is dependent on you will not be able to manage their financial affairs or may be vulnerable to financial **abuse** or **scams** if you die before them, you should discuss with the lawyer how to best provide for that person. Your will must be worded very carefully to make sure that what you want actually happens. A lawyer is able to help you by:

- making sure your will is clear about what you want to happen to your property on your death
- making sure your will meets all the legal requirements
- telling you about a number of standard clauses that can be included in your will to provide for unforeseen events
- telling you about options for dealing with things that may not have occurred to you
- telling you about things you can do now to make dealing with your estate easier after you die
- answering any questions you may have about the process of dealing with your estate
- providing proof in the future that your will was made voluntarily, by your own free choice, and free of undue influence
- providing proof in the future that you had testamentary capacity

If you write your own will, you should have a lawyer look it over to make sure that it meets all the legal requirements and that it says what you want it to say.

What does it cost for a lawyer to do a will?

Lawyers charge a fee based upon the amount of legal service you require and how complex the will is. It can range from under $200 and upwards. You should discuss fees before you make any decisions about hiring a lawyer, whether you plan to prepare the will yourself or you want the lawyer to prepare it.

Can I choose who to leave my property to in my will?

In most cases, you are free to leave your property to who you wish. However, there are two Nova Scotia laws, the Testators' Family Maintenance Act and the Matrimonial Property Act that place some limits on that freedom.

Testators' Family Maintenance Act

This act tries to make sure that your dependents are left with the necessary money and support whenever possible. Children (including adopted children) and a widow or widower are considered dependents under this act.

Common law and same-sex spouses are not considered dependents under the *Testators' Family Maintenance Act* unless they have a registered domestic partnership. Then they are included from the date they registered the partnership. Divorced spouses are not considered dependents under the act.

If you do not provide for a **dependent** in your will, they can go to court and ask a judge to order support. A dependant is someone you are under a legal obligation to support, such as a child under the age of 19 or a spouse. The judge may take into account the following:

- whether a dependent deserves help (based on their character and conduct)
- whether there is any other help available to the dependent
- financial circumstances of the dependent
- any services provided by the dependent to the testator
- the testator's reasons for not providing for the dependent in the will (It helps if the reasons are written and signed by the testator or if they are included as part of the will.)

This is not a complete list. The judge may take other factors into account.

The application for support must be made within six months after **probate** or administration of the estate has been granted. A person who wants to apply for support under this act should first talk with a lawyer.

Matrimonial Property Act

This act recognizes the contribution of both spouses to a marriage. It says that when one spouse dies, the surviving spouse can apply for an equal division of matrimonial assets.

Common law and same-sex spouses are not covered by the *Matrimonial Property Act* unless they have a registered domestic partnership. Then they are included from the date they registered the partnership.

The surviving spouse must apply to the Supreme Court within six months after probate of the will or administration of the estate has been granted. A judge decides what share of the matrimonial assets the surviving spouse should get.

A person who wants to make an application should first talk with a lawyer.

Do I have to leave my estate to my family?

You are responsible to provide for your family and dependents as required by the *Testators' Family Maintenance Act* and the *Matrimonial Property Act* (see previous question), but otherwise you are free to deal with your property as you wish.

You may decide to leave your estate to someone other than your closest relatives. You may decide to leave it to some family members but not to others. If these are the kinds of things you want to do, it is wise to get advice from a lawyer and to record your reasons in writing.

Where should I keep my will?

You should keep your will in a safe place. Your will is a private document, and you may not want it available for family members or others to read.

If you have a safe deposit box that is in your name only or that is held jointly with someone else, that is likely the safest place. It is important that your will be stored in a fireproof location.

You could also give your will to a trusted person to keep in a safe place for you. Keep in mind that it may be many years before your will is needed. The person storing your will may move away or die in the meantime. As time passes, you must always keep track of where your will is being kept.

You should tell your executor where your will is stored. Your executor should be able to find it easily. You should make sure that the people in your life who need to know about your will also know where to get it when it is needed.

If you hired a lawyer to write your will, ask them to keep a copy as well.

Can I change my will?

Yes. A will only comes into force after your death. Until your death, you are free to deal with your property as you wish. For example, if you leave your cottage to your niece in your will, it does not prevent you from selling the cottage and using the money as you wish. The will only applies to property that you still own at the time of your death.

If you are leaving property to someone, you may want to provide for the possibility that they might die before you. For example, if you leave some of your property to nephew, do you want his wife and/or children to inherit it if he dies before you? If you want the property to go to someone else, you should say so in your will.

You can change your will at any time up until you die provided you are mentally **competent**. You should look at your will regularly to make sure it is still what you want. For example, you may no longer own some of the property mentioned in your will. You may want to make changes because of births, deaths, marriages, or divorces in the family.

You should not try to change your will by marking in or crossing out words. This may cause problems. It is much safer to make a **codicil** or a new will.

A codicil is a separate legal document to change part of your will. The opening words of a codicil usually refer to the will it is amending. Then it states which **clauses** of the will are revoked or amended and what is substituted. The closing words of a codicil should say that apart from the changes it makes, you confirm the terms of the original will. You must sign the codicil and have your signature witnessed in the same way as your will. A codicil is generally used only to make minor changes to a will.

It is wise to make a new will if you want to make major changes in your will or if you have made a number of codicils. The first clause of a new

will usually says: "I revoke all wills and testamentary dispositions of any nature and kind made by me." The most recent properly signed and witnessed will is the one that will be used after your death.

You must be of sound mind at the time you make the changes. If you are not, your new will or codicil may be successfully challenged in court.

Can I cancel my will?

Yes. When you cancel a will, you are said to revoke it. There are five ways to cancel or revoke your will or parts of your will.

- Your will is revoked if you marry unless it refers to your marriage and it says whether it is to apply regardless of the marriage.
- Parts of your will may be revoked if you divorced after August 19, 2008. As of that date, a divorce revokes the parts of a will giving a gift, benefit, or power to a former spouse. It also revokes the parts appointing a former spouse as executor or trustee. There can be exceptions. For example, the will, a separation agreement, or a marriage contract may say that the terms of the will are not revoked by a divorce.
- You can make a written document stating that you want to revoke your will. It must be signed and witnessed in the same way as a will. For example, if a bank manager held a testator's will and the testator became ill and signed a letter to the bank manager stating, "Please destroy the will already made out," and the letter was properly signed and witnessed, then it would revoke the will.
- You can make a new will. A properly signed and witnessed new will revokes a previous will. In the same way, a codicil that is properly signed and witnessed often revokes certain parts of your will in order to make the changes you want.
- You can destroy your will or ask some other person to destroy it in your presence. If a will is accidentally destroyed (for example, by a fire in which the testator dies), a copy of the will could still be used because there was no intention to revoke the will.

Is a will made outside Nova Scotia valid in Nova Scotia?

Your will may be valid if it was made outside Nova Scotia. To find out for sure, you should have it checked by a Nova Scotia lawyer.

What does the executor do after I die?

An executor is responsible for seeing that everything in your will is handled properly. The executor gathers all of your assets, pays your debts and taxes out of your estate, and distributes your money and property according to the instructions in your will. It is best to name an executor and a back-up executor in your will so you can be sure that your estate will be handled by someone you know well and trust. Also, you can give broader power to your executor than the Probate Court can give if it has to appoint an administrator.

The executor applies to the Probate Court for a grant of probate. This gives the executor power to handle your estate in accordance with the terms of your will.

If you do not name someone to be an executor in your will, if your executor is not able to act for any reason, or if you die without a will, your next of kin will usually have to ask the Probate Court to appoint someone to fill the executor's role. This person is called an **administrator**.

The court uses the term **personal representative** for a person appointed as either an executor or an administrator.

Who should I choose as an executor?

Most people ask a family member or a close friend to act as their executor. You need to be sure that the person you choose has the time and the ability to carry out the many duties of an **executor**. The executor should be someone who will get things done. Looking after an estate can be difficult and it takes time. Sometimes it includes responsibilities that last for years.

Here are some things to keep in mind when you choose an executor:

- The best executor is a trustworthy, reliable, and **competent** adult.
- Consider choosing someone who has some knowledge about banking and business affairs.
- Choose someone who is likely to outlive you.
- Choosing someone who lives in the same province as you do may cut down on long distance phone calls and other administrative expenses.
- Your spouse, friend, family member, or heir may be able to do a good job as an executor. Many people choose their spouse or their main heir as their executor.

- You should appoint a back-up executor in case your first choice dies, moves away, or for some reason is unable to do the job.
- Before you name an executor in your will, you should ask if they are willing to take on the job.

You can name your lawyer as executor, but most lawyers do not act as executors. They prefer to handle only the legal side of estates. Before you name your lawyer, ask if they are willing to be your executor.

Can the person I choose as executor refuse the position?

Yes. A person named in your will as your executor can refuse to act as executor. This is called a **renunciation**. You should name a back-up executor in your will in case this happens. If you have not named a back-up executor, then your next of kin will have to ask the court to appoint someone else.

Before you make your will, you should ask the people you want as your executor and back-up executor if they are willing to take on the job. If either one refuses, you can appoint someone else.

Can I appoint joint executors ?

Yes. You can appoint more than one executor (called "co-executors") to share the responsibility. Having more than one person in charge means that there may be disagreements about what is to be done. Unless you provide otherwise, each co-executor has the authority to sign on behalf of your estate. If your co-executors do not agree, this could cause problems for your estate.

Can I choose a trust company to act as my executor ?

If your estate is complicated or if you do not have a relative or friend who is able to act as executor, you may want to appoint a **trust company** as your executor. You should check that the company is willing to act as executor or co-executor. If you don't check, the company may renounce and refuse to act as executor upon your death.

Most trust companies have experience in estate planning. Their advice may help you plan your estate to save taxes and to avoid administrative problems. Also, because such companies are strictly regulated, you can be sure that your estate will be handled properly and legally.

If there is a chance that a problem will arise among your heirs, a trust company might be a good choice because it would be an impartial executor. If you appoint a trust company as your executor or co-executor, the company may give you free advice on drafting your will and may store it for you.

There can be disadvantages to using a trust company:

- they may charge the maximum fee allowable. (Any executor may charge up to 5% in fees.)
- they can be conservative investors
- they may not be as familiar with your assets as a family member or friend
- they may not know your dependents and their needs as well as a family member or friend
- they may not be able to be as flexible in dealing with your dependents as a private individual could be
- their fees are subject to certain taxes that are payable out of the estate

Before choosing an executor, you may also want to think about the time involved in administering your estate. For example, if you want to set up a trust for the care, education, and benefit of your children or grandchildren, this would be a long-term commitment for an executor. In a case like this, you may want to consider a trust company rather than someone who might not be able to make such a commitment or who might die before the funds in the trust have all been distributed.

What happens if my intentions are unclear in my will ?

If your will is unclear when you die, your family may have to go to court to sort out your estate. Your executor will have to talk to a lawyer.

Where can I get more information on probate ?

The Probate Court in each of Nova Scotia's **probate** districts has information available to the public. You may obtain copies by visiting or by calling your local Probate Court office or by going to the Courts of Nova Scotia website, www.courts.ns.ca/self_rep/self_rep_kits.htm. Scroll down the page until you see the listing for "Probate Court." The phone number for your local Probate Court office should be

listed in the blue government pages of your phone book under "Courts." Office location information is also available on the Courts of Nova Scotia website. Click on the "Probate Court" tab at the top and select "Location."

The information available includes:

- The *Probate Act* - Questions and answers
- Dealing with an estate
- Grant of probate - checklist
- Grant of administration with will annexed - checklist
- Grant of administration - checklist
- Passing the accounts of an estate in Probate Court - checklist
- How to prepare the final account of the personal representative

Where can I get more information?

Legal Information Society of Nova Scotia (LISNS)
Legal Information Line
902.455.3135
1.800.665.9779

LISNS has online information at www.legalinfo.org.
Under "Legal Information,"
go to "Planning your Life."
Click "Making a Will."

ABUSE OF OLDER ADULTS

Abuse can happen to anyone. Financial abuse is the most commonly reported form of abuse of older adults, but there are many other types. This section discusses what laws exist to protect older adults from different forms of abuse.

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What is abuse of older adults?

Abuse of older adults is any action that threatens the health, security, or well-being of an older person. It is abusive and neglectful behaviour towards older people. It is also called **senior abuse** or **elder abuse**.

Types of abuse include:

Physical: punching, kicking, slapping, shaking, using physical restraints or improper medication, burning, scalding with hot water, etc.

Sexual: any form of sexual activity with a person without the consent of that person, for example, sexual comments, intercourse, touching or fondling, or kissing.

Emotional, Psychological or Mental: treating an adult like a child; making hurtful or taunting comments; continually criticising, insulting, or belittling; controlling; frightening; locking a person in a room; not allowing a person to have visitors; or threatening to put a person in an institution.

Neglect: not providing a person's basic needs such as adequate food, medical attention, shelter, assistance, care, or clothing. Neglect may be from a family member or caregiver. Also, there may be "self-neglect," where people cannot or will not care adequately for themselves.

Financial: stealing cash, cheques, or savings; threatening not to visit or not to allow others (such as grandchildren) to visit unless money or gifts are given; fraud; or misusing money, property, or authority such as a **power of attorney**. (For more information on financial abuse, see the section *Powers of Attorney*.)

Denial of Rights: withholding important information; interfering with mail; or inappropriately restraining or confining.

Abuse is most often by a family member, friend, or caregiver.

What laws protect older adults from abuse in Nova Scotia?

In Nova Scotia, laws that protect against abuse of older adults include the *Protection for Persons in Care Act*, the *Adult Protection Act*, and the *Domestic Violence Intervention Act*. The *Criminal Code of Canada* also protects older adults across the country.

What is the *Protection for Persons in Care Act?*

This law provides additional protection from abuse and neglect for patients and residents 16 years of age and older receiving care in Nova Scotia's health facilities.

These include:

- hospitals
- residential care facilities
- nursing homes
- homes for the aged
- homes for the disabled
- group homes
- residential centres

It is not considered abuse if a service provider is carrying out their duties and following recognized professional standards and practices, and the policies and procedures of the health facility.

The *Protection for Persons in Care Act* requires health facility administrators to protect patients and residents from abuse and to keep them reasonably safe. Health facility administrators and service providers (staff and volunteers) must report abuse that has been reported to them, or that they suspect or have witnessed. Anyone else, including a patient, resident or visitor, may report suspected abuse by calling 1-800-225-7225.

What abuse is covered by the *Protection for Persons in Care Act?*

Under the *Protection for Persons in Care Act*, abuse may be any of the following:

- physical
- sexual
- emotional
- misuse of medication
- neglect
- misuse or theft of money or possessions

The act does not protect against all financial abuse. It only protects against misuse or theft of money or possessions belonging to a patient or resident in the health facility.

If you believe that a senior in care is the victim of other financial abuse and is unable to look after their affairs, you should talk with them. Depending on the situation, you might also talk to someone who is close to the senior (such as a family member) who may be able to help

the senior.

You can also contact the police. Financial abuse may be a criminal offence. A senior who is being financially abused should also talk to the police and to a lawyer.

What happens after a report is made under the *Protection for Persons in Care Act*?

After a report of abuse is received, an inquiry is done by the Minister of Health to decide if further investigation is required. If it is, the minister appoints an investigator to conduct a formal investigation.

The patient or resident must be notified that a report of abuse has been made and that an investigation will be done. The investigator must prepare a report. There may be recommendations to protect the patient or resident, or for further investigation.

Will the police be involved in an investigation under the *Protection for Persons in Care Act*?

The police may become involved where there is evidence that the abuse amounts to a criminal offence, for example, physical assault, sexual assault, theft, or **fraud**. **Neglect** may also be a criminal offence if the person who has a duty to provide for the senior fails to do so.

Anyone involved may contact the police: the senior, a family member, an adult protection worker, a neighbour, or a friend. The police will investigate the situation and decide whether to lay criminal charges against the person accused of abuse.

Criminal charges are only laid if there is enough evidence to get a conviction. Often a victim is reluctant to report abuse, or reluctant to give evidence. This may be due to fear of the abuser, regard for the abuser, or embarrassment or shame about the abuse. Fear of reprisal or punishment is the major reason abuse is not reported.

What is the *Adult Protection Act*?

The *Adult Protection Act* is a Nova Scotia law that provides a way for vulnerable adults who lack the physical or mental ability to care for themselves to be safe from abuse and neglect. It applies to adults who are not living in a care facility. It offers protection from physical, sexual, and mental abuse as well as from neglect. The *Adult Protection Act* does not protect against financial abuse. (For more information see, *Does the Adult Protection Act protect older adults against financial abuse?)*

The *Adult Protection Act* does not serve to punish offenders.

Who is an adult in need of protection?

An adult in need of protection under the *Adult Protection Act* is a person who is 16 years of age or older who:

- has a physical disability or a mental infirmity
- is abused or neglected in the place where they live
- is unable to protect themselves from the abuse or neglect
- is refusing, delaying, or unable to provide for their own care

Does the *Adult Protection Act* protect older adults against financial abuse?

No. However, if older adults are physically abused or neglected to make them hand over money, cheques, or property to the abuser or to give the abuser access to a bank account, steps taken by Adult Protection Services to protect a senior from the physical abuse or neglect might also stop the financial abuse. Adult Protection Services investigates reports of abuse and neglect.

If there is no physical abuse or neglect, but you believe an older adult is being financially abused and is unable to look after their affairs, you should talk with them. Depending on the situation, you might also talk to someone who is close to the senior (such as a family member) who may be able to assist. You can also contact the **public trustee** or the police. The Public Trustee Office, in certain situations, has the right to act for people who are unable to care for their own affairs. (For more information, see the section *Public Trustee*.)

Financial abuse may be a criminal offence, for example, stealing, forging a signature, or misusing a power of attorney. A senior who is being financially abused should talk to the police and to a lawyer.

Who enforces the *Adult Protection Act*?

The Nova Scotia Department of Health enforces the act through Adult Protection Services.

If an adult protection case comes to court, it is handled by the Family Court in most counties. In the Halifax Regional Municipality and in Cape Breton, it is handled by the Supreme Court (Family Division).

Who reports abuse or neglect to Adult Protection Services?

The *Adult Protection Act* places a duty on everyone to report the abuse or neglect of an adult in need of protection. You can make a report to Adult Protection Services by calling 1-800-225-7225 (toll free) or to your local police.

Reports of abuse often come from community agencies that have contact with the senior, from the police, and from health care professionals. It

does not matter if the information is confidential or privileged — they must still report it. Reports are also made by relatives, neighbours, and friends.

While people who report abuse do not have to be absolutely certain that abuse is taking place, they must have good reason to believe that the older adult is in need of protection.

If people making a report are wrong about the abuse, they are protected from being sued if they had good reason to make the report. Court action can only be taken if the report was malicious or made without good reason.

The identity of those making a report is confidential. However, if the case goes to court, the person may have to give evidence. Then their identity would become known.

It is an offence not to report the abuse of an adult in need of protection. Anyone who fails to report could be charged. If convicted, the maximum penalty is a fine of up to $1,000 or prison for up to one year, or both.

What happens when a report of abuse is made under the *Adult Protection Act*?

When a report of abuse is made, Adult Protection Services must find out if there is reason to believe that the senior is in need of protection. It may investigate by:

- visiting the senior's residence
- talking with the senior
- meeting with the person accused of the abuse
- meeting with the person who reported the abuse
- asking a doctor to assess the senior's level of competency, their need for care and attention, and whether they have been abused
- talking with the senior's family, doctor, caregivers, and neighbours

If the investigation shows that the senior can make competent decisions and that they are not refusing assistance because of threats, then Adult Protection Service will end its investigation. It may suggest services that the senior can use, but it cannot force the senior to use these services.

If adult protection workers find evidence that a senior is in need of protection, they must help the senior get services that will improve the situation.

Does a senior have to agree to an assessment by Adult Protection Services?

Yes. If the senior refuses the assessment, or if their caregiver refuses, Adult Protection Services may ask for a court order. If the judge orders an assessment, Adult Protection will be able to enter the place where the senior lives so that it can carry out the assessment.

Usually the senior will get at least four days notice before entry is ordered. In an emergency, however, a judge can allow entry without notice.

Who decides whether a senior is in need of protection?

If Adult Protection Services believes that a senior is in need of protection but they refuse assistance, it can ask the court for an order that says that the senior does need protection. A judge then holds a court hearing to decide the matter.

If the adult protection worker believes that a senior is in immediate danger, they may take the senior into temporary care until a hearing.

Before making an **order** that "an adult is in need of protection," a judge must be satisfied that:

- the senior is a victim of abuse or neglect where they reside
- the senior is refusing services offered by Adult Protection Services either because they are not mentally competent to decide or because they are afraid of harm from the abuser if the services are accepted

After hearing the evidence, if a judge finds that the senior is in need of protection, they will make a Protective Intervention Order. This is made when a judge is satisfied that someone is a threat to the senior in need of protection, and that more steps are needed to keep the senior safe from an abuser.

What is a Protective Intervention Order?

A Protective Intervention Order can order someone who may be a threat to a senior to:

- leave the premises where the senior resides (unless that person owns or rents the place)
- have no contact or only limited contact with the senior
- pay money to help support the senior as required by other laws

Protective Intervention Orders may not be changed until at least three months have passed. If the senior in need of protection does not have a guardian or if the guardian is not acting in the best interests of the senior, the judge may notify the public trustee.

Can a senior be removed from their home?

Yes. The Adult Protection Service may immediately remove a senior from their home if there is evidence that:

- the senior's life is in danger
- the senior is in need of protection
- the senior is mentally incapable of deciding whether to accept services or is being pressured not to accept services

Within five days of being removed from the home, the Minister of Health must either return the senior to their home or apply to the court for an order declaring that the senior is in need of protection.

If a judge finds that the senior is in need of protection, one of the options open to the Department of Health is to place the senior in a home for special care.

The public trustee may be asked to intervene to manage the senior's property if there is a danger that the property will be lost, wasted, or damaged while the senior is in care. (For more information, see the section *Public Trustee*.)

Is the judge's decision final?

No. The judge's decision may be appealed to the Nova Scotia Supreme Court or to the Court of Appeal. Anyone considering an appeal should talk with a lawyer before deciding what to do.

How long does a court order last?

An order declaring an adult to be in need of protection or a Protective Intervention Order lasts for six months. The order will end at that time unless a further application is heard by the court.

An application can be made to the court to renew, change, or end the order before the six months are up. Those who may apply are the Minister of Health, the senior, someone acting on their behalf, or the person against whom an order is made. Any renewal of the order will expire after six months.

What happens to the abuser?

The main purpose of the *Adult Protection Act* is to protect the adult, not to punish the abuser. However, investigation by Adult Protection Services may be enough to stop further abuse.

There may be counselling available for people involved in abusive situations, either as a victim or an abuser (not necessarily together).

An abuser may be removed from the senior's home under a Protective Intervention Order. The *Adult Protection Act* says that anyone who breaks a Protective Intervention Order may be punished by a fine of up to $1,000, imprisonment up to one year, or both. Also, the senior may be able to get a peace bond to stop an abuser from contacting them. The senior can call the police if an abuser breaks the peace bond.

For more information on peace bonds, go to the end of this section.

Is there a register of abusers?

No. Reports of abuse in private homes and institutions are kept on file by Adult Protection Services. The files are not generally available to the public. However, family members may apply for information in these files under the *Freedom of Information* and *Protection of Privacy Act*.

Criminal charges may be laid against the abuser in some situations. Abusers who are convicted of a criminal offence, such as assault, will have a criminal record.

Workers who abuse adults within an institution may become known to administrators and staff at other institutions and will have difficulty getting employment in other institutions.

If I am mentally and physically competent and I am being financially abused, where can I go for help?

Financial abuse can happen to anyone. This is the most commonly reported form of abuse of older adults. So remember you are not alone.

Financial abuse may include:

- Manipulation and coercion to gain access to your money or property (including changing your **will** or signing a contract)
- Theft (including from joint bank accounts)
- Forgery
- Fraud
- Abuse of power of attorney

You should talk to the police and to a lawyer. Financial abuse such as theft, theft by a person holding power of attorney, forgery, or fraud is a criminal offence covered under the *Criminal Code of Canada*. Remember to keep detailed records, as they may be necessary in a police investigation or legal proceeding. Records can include a diary of events, copies of cancelled cheques, and copies of legal documents.

Also see the section on *Scams, Identity Theft and Other Fraud*.

What is the *Domestic Violence Intervention Act*?

The Domestic Violence Intervention Act is a Nova Scotia law that protects individuals from violence by a partner. It does not protect against financial abuse. A "victim" under the act is a person aged 16 years or older who has been abused either by a partner, if the couple has lived or are living together, or by the other parent of one of the victim's children even if the parents never lived together. The act does not protect anyone from abuse by a child or parent.

The act allows a short-term emergency protection order to be made. The order can last up to 30 days and can include:

- temporary custody of a child
- exclusive possession of a residence for a period of time
- temporary possession of property (such as a car, bank card, identification documents, health cards, and personal effects)
- seizure of weapons
- prevention of direct communication with the victim

An emergency protection order is only used in situations that are serious and urgent. It is not meant to replace other ordinary legal options such as a peace bond.

All applications are made over the telephone by calling the Justice of the Peace Centre at 1-866-816-6555 between 9 am and 9 pm. Certain people, including police officers, can apply outside those hours. The telephone conversation will be taped for use as evidence.

The *Domestic Violence Intervention Act* provides a quick process of review, notice, and hearing before a judge. For more information, you can talk to a lawyer.

Where can I get more information on abuse of older adults?

If you know an older adult in Nova Scotia in need of protection, call 1-800-225-7225 (toll free).
If you have a concern about abuse and you need information, support, or a referral, call the Senior Abuse Line at 1-877-833-3377 (toll free).

Other sources of information are:

Canadian Network for the Prevention of Elder Abuse (CNPEA)
An organization dedicated to the prevention of the abuse of older people in Canada.

Their website has information about abuse and neglect issues concerning older adults. See especially:
"In the News" for national and international news articles, and
"Learn about Abuse"- current information on abuse and neglect in community and institutional settings
www.cnpea.ca/about__cnpea.htm

Public Trustee Office
PO Box 685
Suite 405, 5670 Spring Garden Road
Halifax, NS B3J 2T3
Tel. 1-902-424-7760 (not toll free)
www.gov.ns.ca/just/public_trustee.asp

Nova Scotia Department of Seniors
1740 Granville Street, 4th floor
PO Box 2065
Halifax, NS B3J 2Z1
Tel. 1-902-424-0065
Seniors Information Line
1-800-670-0065 (toll free in NS)
E-mail: scs@gov.ns.ca
www.gov.ns.ca/scs

To read the Legal Information Society of Nova Scotia (LISNS) brochure *Peace Bonds against a Spouse/Partner*, go to the LISNS website at www.legalinfo.org.
Under "Legal Information," go to "Family."
Click on "Family Violence" for the PDF.

You can also contact LISNS at:

Legal Information Line
902.455.3135
1.800.665.9779

RCMP Seniors' Safety Programs Coordinators

WESTERN REGION
Hants County
140 Morison Drive
P.O. Box 3357
Windsor NS B0N 2T0
(902) 798-8380

Kings County
c/o Wolfville RCMP Detachment
363 Main Street
Wolfville NS B4P 1A1
(902) 542-3817

Annapolis County
552 Granville Street
PO Box 340
Bridgetown NS B0S 1C0
(902) 665-4481

Digby
RCMP Detachment
P.O. Box 1149
Digby NS B0V 1A0
(902) 245-2579

Municipality of Clare
Security for Seniors Association
RCMP Meteghan
60 Connector Road
PO Box 178
Meteghan NSB0W 2J0
(902) 645-2326

Queens
RCMP Queens Detachment
PO Box 1570
Liverpool NS B0T 1K0
(902) 350-0231

Bridgewater
45 Exhibition Drive
Bridgewater NS B4V 0A6
(902) 543-3567

CENTRAL REGION
Cole Harbour and District
1171 Cole Harbour Road
Dartmouth NS B2V 1E8
(902) 435-0106

Eastern Passage
(902) 426-5285

Lake Echo/East Preston/Cherry Brook
(902) 829-2229 (office)

Musquodoboit Harbour
Senior Safety Coordinator
(902) 827-2436

Fall River
c/o Fall River Crime Prevention Association
1359 Fall River Road
Fall River NS B3T 1E5
Phone (902) 860-8578 (RCMP office)

Beaverbank
popple@ns.sympatico.ca
Sackville Senior

Tantallon
(902) 826-2638

Enfield
RCMP Enfield Detachment
136 Highway 2
Enfield NS B2T 1C8
(902) 883-7077 (RCMP Office)
(902) 883-2438

EASTERN REGION
Pictou
c/o Pictou County Municipalities Crime Prevention Association (PCMCPA)
P.O. Box 100
Pictou
Pictou County NS B0K 1H0
(902) 396-3855

Antigonish Town & County
Antigonish RCMP – Antigonish Senior Safety Program
4 Fairview Street
Antigonish NS B2G 1R3
(902) 863-6500 (office)

Association for Safer Cape Breton Communities
PO Box 5300
1250 Grand Lake Road
Sydney NS B1P 6L2
(902) 563-1405

Eskasoni Elders Safety
c/o Educational Program Innovations Charity Society
PO Box 1897
70 Centre Street
North Sydney NS
(902) 794-7225

Elders Safety Coordinator
PO Box 7606
Eskasoni NS B1W 1A9
(902) 379-3000 Ext. 229

NORTHERN REGION
Truro and Colchester County Nova Scotia
535 Prince Street
Truro, Nova Scotia B2N 1E8
(902) 895-4295

WHAT DO THE WORDS MEAN?

LEGAL Information
SOCIETY OF NOVA SCOTIA

abuse: any act or neglect to act which threatens the health, security, or well-being of a person

access: a privilege which recognizes the right of the child to spend time with an individual such as a parent living with the child

access order: a court order that provides for contact between a dependent and the person applying for contact, such as visits, phone calls, emails, mail

account: the act of proving what one has done to meet one's responsibilities

administrator: the person appointed by the court to fill a role, e.g. the role of executor if none was named in the will of a deceased person

affidavit: a legal statement that is sworn before a Commissioner of Oaths or a Notary Public

affidavit of execution: a statement sworn by a witness about the signing of a document

assisted suicide: the act of intentionally killing oneself with the help of another person

attorney: the person who receives the authority to act on another's behalf. This person is not necessarily a lawyer

beneficiary: a person who receives property through a will as an inheritance. The plural is beneficiaries. Also called an heir.

bond: a type of insurance policy

capacity: to be competent to perform a specific task, such as writing one's own will. Also see testamentary capacity.

clause: one section of a legal document, for example, of a will

codicil: a legal document written to change part of an existing will

cohabitation agreement: a written agreement between a couple who are living or plan to live together which sets out their rights and responsibilities to one another

Commissioner of Oaths: an officer who has the authority to administer oaths on legal documents

common law partner: a person in an unregistered live-in relationship with a partner of the same or opposite sex. See common law relationship.

common law relationship: an unregistered live-in relationship with a partner of the same or opposite sex

competent: a legal term which means to be of sound mind and able to make reasonable decisions. Also see incompetent person.

conciliation: a process for negotiating a custody or access agreement between two parties that occurs by a conciliator talking to the parties separately

consent order: the name of the agreement reached between two parties when the issue is resolved using mediation or conciliation

consumer fraud: the intentional deception of a person who buys something

custodian: a person who has legal care and control of property that belongs to someone else

custody: the care and control of a child

delegate: the person legally authorized to make decisions for another person. Also informally called a proxy.

dependent: a person whom another person is under a legal obligation to support, such as a spouse or a child under age 19

domestic partnership: see registered domestic partnership

donor: the person giving someone else the authority to act on her or his behalf

elder abuse: see senior abuse

Enduring Power of Attorney: a legal document which authorizes a person or company to act on behalf of another person, even if they become mentally incompetent. A type of Power of Attorney.

enforcement order: a particular kind of court order which gives the police the power to enforce a contact order

estate: all of the property owned by a deceased person when they die

euthanasia: an act taken by one person to end the life of another to relieve that person's suffering

execution: the formal signing of a legal document

executor: the person named in the will of a person who has died, responsible for seeing that everything is handled properly

fraud: intentional deception. Also called a scam.

fraudster: a person who commits a fraud

general power of attorney: a power of attorney that gives your full authority to your attorney

guardianship: the legal process which allows a person to apply to be responsible for the personal and financial interests of another person who is mentally incapable of caring for his or her own interests. See guardian.

guardian: a person who has applied to the court for guardianship. In the case of adults, this is usually of an estate

holograph will: a handwritten will signed and written by the testator but not witnessed

identity theft: the illegal act of using personal information, for example personal identification numbers or Social Insurance Numbers, to steal from a person

incompetent person: anyone who is legally incapable of managing their own affairs because of mental infirmity. This may be as a result of an accident, disease, or psychiatric illness.

instruction directive: a person's expression of wishes for health care measures they want taken for them if they become unable to express their wishes themselves, as laid out in a personal directive

intestacy: the state of being intestate

intestate: to die without a will

inventory: a listing of all of a person's possessions, such as for the purpose of a probating will

joint tenancy: a type of ownership of property in which each person has equal ownership. See tenancy in common.

living will: a form of instruction directive in which a person sets out one's wishes for health care measures they do or do not want if they become unable to communicate

marriage contract: a prenuptial agreement between two persons who are married to one another.

mediation: a process for using a neutral third party (the mediator) to negotiating a custody or access agreement between two parties, such as a guardian and grandparent, who agree to meet face-to-face

mediator: a person who helps negotiate agreement between two parties. See mediation.

medical consent: any signed document which shows agreement to your own medical treatment

neglect: the failure to provide a person with what he or she needs, for example inadequate food, medical attention, shelter, assistance, care, or clothing. A form of abuse

Notary Public: a person, usually a lawyer, who serves the public in drawing up and certifying straightforward legal documents, and authenticating documents as valid

order: a document authorized and signed by a judge

ordinary Power of Attorney: see Power of Attorney.

permanent care: the placement of a child in care which resembles that of wise and conscientious parents

personal directive: a type of advance health care directive which allows you to authorize someone else to make decisions about personal care and consent to medical treatment on your behalf

personal representative: the court's term for a person appointed as an executor or administrator of a will

phishing: a tactic used by identity thieves, such as an email which threatens serious consequences if the recipient doesn't immediately update electronic information

probate: a legal process to deal with a person's estate after his or her death

property: a legal term which indicates all possessions owned by a person, not just real estate

Power of Attorney: a legal document in which you give another person authority to act on your behalf during your lifetime. Also called ordinary Power of Attorney.

proxy: a person who acts as the decision maker. If a person becomes unable to consent to treatment, a proxy has the authority to make health care decisions for that person.

proxy directive: the appointment of a person to act as the decision maker, or proxy, as laid out in your advance health care directive, if you become unable to consent to treatment

public trustee: the provincial office which has authority to act for people in certain situations if they are unable to care for their own affairs, for example, mentally incompetent persons

registered domestic partnership: a declaration filed with the province of Nova Scotia by two people of the same or opposite sex who are living in a conjugal relationship

renunciation: a refusal to act or fulfill a function to which you have has been named, such as refusing to act as an executor.

residuary: any property remaining after all specified gifts in a will have been paid or given to one or more beneficiary

retainer: the payment of an advance fee paid to a professional who will act for you, such as a lawyer

revoke: a legal term which means to cancel an existing legal document, such as a will

scam: see fraud.

seeking leave of the court: getting the court's permission to make an application to ask it for something, such as custody.

senior abuse: any action which threatens the health, security, or well-being of an older person. Also called elder abuse.

shoulder surf: a tactic used by identity thieves who watch as you punch your access codes and passwords on ATMs, debit machines, telephones, and computers

specific power of attorney: a power of attorney that limits exactly what authority you give to your attorney

Springing Power of Attorney: a specialized Enduring Power of Attorney document which says what future event will cause it to come or "spring" into effect. Also see Power of Attorney.

surety: the person or company which guarantees to pay money or perform acts if a bond fails

tenant: a person who owns an asset, such as a joint bank account

tenancy in common: a type of joint ownership of property in which each person owns a share of the money. See joint tenancy.

testamentary capacity: to be mentally competent to make a will. Also called "being of sound mind." Also see testator.

testator: a person who makes a will

trust company: a corporation organized to perform legal duties, such as a trustee in managing estates

trustee: someone who has legal responsibility to manage something, such as property, because of a court order or other legal document

Trustee in Bankruptcy: Court-appointed trustee who administers the affairs of a bankrupt company or person

undue influence: a situation in which someone exerts an inappropriate amount of pressure on another person, for example while he or she writes a will

will: a legal document in which you say what you want done with your property after death

For more information on the topics covered in *It's in Your Hands: Legal Information for Seniors and their Families*, and on the law in Nova Scotia, go to the Legal Information Society of Nova Scotia (LISNS) website at www.legalinfo.org. Click on "Legal Information" or use the Legal Seagull search.

It's in Your Hands provides general information only. It is not meant to replace legal advice from a lawyer. We try to keep information accurate and up-to-date. However, laws do change. You should check with a lawyer or call LISNS's Legal Information Line for changes to laws mentioned. If you have a legal question, or you need help to find a lawyer in your area, call the LISNS Legal Information Line and Lawyer Referral Service. The phone number is 1.800.665.9779 or 455.3135 in HRM.

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