



## REAL ESTATE LAW

# Wills and Powers of Attorney



Jacques Robert  
**REAL ESTATE  
LAW**

We always ask purchasers whether they have Powers of Attorney and Wills. If purchasers do not already have these documents, we strongly encourage them to consider having these documents drafted in the near future. Since real property is such a large asset, it is important to have provisions in place to manage the property if you lose the ability to manage it or to dispose of the property as you wish if you pass away.

Powers of Attorney are legal documents that appoint a person to act and make decisions on your behalf if you are not able to. For example, you might lose the ability to make decisions for yourself as the result of an accident or sudden illness. The

designated person would act on your behalf until you were well enough to resume making those decisions. Often people assume that their spouse will automatically be their power of attorney. This is not the case. Because of the Privacy Act and other legislation and cases, financial institutions are very leery of assisting anyone who is not the account holder or the designated Power of Attorney with the proper legal document in hand.

There are two types of Powers of Attorney. With a Power of Attorney for Personal Care, the attorney will make medical decisions for you. With a Power of Attorney for Property, your attorney will handle the day-to-day activi-

ties with the bank accounts and property. It is important to have powers of attorney for property when you own a home so that there is someone appointed to look after the utility bills, property taxes, and maintenance of the property while you are not able to look after your affairs.

If there is an illness or car accident and the individual does not have Powers of Attorney, the doctors and banks will send the person's family to court to obtain a court order to have someone appointed as the attorney. This can be costly and time consuming when time is of the essence.

Several people ask whether a Power of Attorney form downloaded from the internet is sufficient. While it is a legal document when properly filled out and witnessed, many financial institutions will not accept the document unless it has been notarized by a lawyer. Most lawyers will

not notarize the document because they did not prepare the document or see the signatures at the time they were signed. Therefore, if you are going to rely on the downloaded form, take the power of attorney to your financial institution to find out if they will accept it. It is important that this step is done while the person is still capable of making decisions. If you wait too long and the person is no longer capable of appointing an attorney, the only remaining option is to get a court order to have an attorney appointed.

Wills are also important, especially when the person has real property. When a person passes without a Will, the rules of intestacy will apply to their estate. If the person has a spouse, the spouse will receive the first \$200,000 of the estate. The remainder of the person's estate will be divided between the spouse and the



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children. The court will also choose the personal representative (executor) of the estate and it may not be the person you would have wanted to manage your estate. If the real property forms part of the estate, the home may have to be sold so that the estate can be properly divided among those entitled to a share.

If you hold your home as tenants in common with someone else, it is particularly important to have a Will to specify where that share of the property is to go. When you hold title jointly with another person and one person passes away, that person's share of the property will automatically go to the

other person. If the title is held tenants in common and one person passes away, that person's half goes to their estate and will be left to whoever is the named beneficiary of the share of the property in the Will; the other half will remain as the other person's share. Therefore, if you hold title as tenants in common, it is very important to have a Will to designate a beneficiary of your share of the home.

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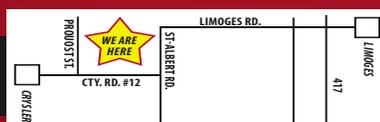
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