

TAB 6

Power of Attorney Escrow Instructions

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Practice Gems: Drafting and Administering Powers of Attorney for Personal Care and Property 2010 *Avoiding the Pitfalls*



The Law Society of
Upper Canada | Barreau
du Haut-Canada

CONTINUING PROFESSIONAL DEVELOPMENT

POWER OF ATTORNEY ESCROW INSTRUCTIONS

TO: (Name of Law Firm), or any successor firm thereof

FROM: (Name of donor)

RE: **POWER OF ATTORNEY MADE BY ME IN FAVOUR OF** (attorney named under Power of Attorney)

You have agreed to hold the above document (the "Document") in safekeeping for me upon the terms set out herein. In view of the fact that a need for the use of the Document may arise in circumstances where I might lack the capacity to direct you, you may rely upon these instructions at that time.

Options:

1. Release the Document to the attorney named therein upon my request.
2. Release the Document to the attorney named therein upon his/her request.
3. Release the Document to the attorneys or any one of them at any one of their request/the request of the majority of them/the unanimous request of all of them.
4. Release the Document to the attorney named therein after satisfying yourself, in your sole and unfettered discretion and on the basis of such information as you may deem necessary, that I am mentally incapable of managing my affairs.

If use is made of alternate Powers of Attorney ("Primary" and "Secondary" Powers of attorney would be identified in the Re; line above and in addition to #4 above, the following would be included:

5. Release the Secondary Power of Attorney to the attorneys named therein, or to either one of them, after satisfying yourself, in your sole and unfettered discretion and on the basis of such information as you may deem necessary, that I am mentally incapable of managing my affairs and that the attorney named in the Primary Power of Attorney is unwilling or unable to act as my attorney.

I agree that in consideration of your undertaking to hold the Document for me, you shall not be liable to me, my heirs, my estate trustees or to any third party as a consequence of relying on these Escrow Instructions or exercising any judgment these Escrow Instructions require you to exercise. I, on behalf of myself and my estate, hereby indemnify you for any liability, losses, costs, damages, solicitor's fees and expenses sustained or incurred by you in acting hereunder and from any liability to my estate or to any third party in connection therewith.

In carrying out your obligations the following shall apply:

- (a) You may rely upon any written notice, demand, certificate or document which you in good

faith believe to be genuine.

- (b) You shall be paid fees at your regular hourly rates and reimbursed for your costs for acting as escrow agent.
- (c) Your duties and responsibilities shall be limited to those expressly set forth in these Escrow Instructions.
- (d) You shall not be subject to, nor obliged to recognize, any agreement between myself and the person(s) named as my attorney(s) in the Document.
- (e) I may change these Escrow Instructions at any time as long as you are satisfied that I have the capacity to provide such different instructions.
- (f) You may, where necessary, provide these Escrow Instructions to any physician for the purpose of exercising such judgement. Such physician shall be similarly indemnified in relying on these Escrow Instructions or exercising any judgement the circumstances require him or her to exercise.

You may resign as escrow agent at any time by giving me written notice of your resignation, specifying the effective date thereof. I agree to, within thirty (30) days after receiving such notice, appoint a successor escrow agent to whom you will provide the Document. If I have not appointed a successor escrow agent or the successor escrow agent appointed by me has not accepted such appointment by the end of the thirty (30) day period, you may apply to a court of competent jurisdiction for the appointment of a successor escrow agent and the costs, expenses and solicitor's fees which you incur in connection with such a proceeding shall be paid for by me or out of my estate.

Any decision to be made by you pursuant to these Escrow Instructions shall be made by (*name of drafting solicitor*) or any two partners of your firm.

These instructions shall survive any subsequent legal incapacity to manage property on my part.

September 16, 2010
Date

(NAME OF DONOR)