

# Seniors and the Law

In Newfoundland and Labrador

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## Seniors and The Law

Public Legal Information Association of Newfoundland and Labrador (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the intent of increasing access to justice. PLIAN would like to extend a sincere Thank-you to the Government of Canada's New Horizons for Seniors Program for their financial contribution towards this project.

We hope this booklet will provide readers with general legal information about various issues impacting seniors living in Newfoundland and Labrador. The topics covered in this booklet were determined as a result of holding focus groups with seniors and service providers. Their input was invaluable. PLIAN would also like to acknowledge the many others who have contributed to this project including Karen Rehner, Amanda Lannon, Merissa Wiseman, Tabitha Boland, and the Seniors Resource Centre's Clear Language Committee. Everyone's contributions are greatly appreciated.

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Executive Director

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This booklet provides general information about wills, Enduring Power of Attorney and Advance Health Care Directives in Newfoundland & Labrador. It is not meant to replace advice from your doctor or lawyer. If you are thinking of preparing any of the listed documents we strongly advise you to seek professional advice.

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# Seniors and the Law

## Wills

### DISCLAIMER:

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### What the words mean

**Estate:** Everything you own at your death.

**Beneficiary:** A person or organization who you give something to in your will.

**Executor:** The person responsible for carrying out the instructions in your will.

**Probate:** The legal process of validating a will.

**Testator:** The person who makes a will.

**Capacity:** The ability of a person to understand the nature and effect of his or her actions.

**Codicil:** An addition or amendment to a will.

**Holographic Will:** A will in the handwriting of the testator.

**Intestate:** When a person who dies without a valid will.

**Administrator:** The person responsible for distributing an estate when there is no will.

### What is a will?

A will is a legal document that explains what you want done with the things you own, your **estate**, after you die.

### Why should I make a will?

A will gives you some control over what happens to your **estate** after you die. You can know that your things will go to the people who you want to have them.

If you die without a will, or **intestate**, your **estate** will be divided amongst your living relatives according to a provincial law, the *Intestate Succession Act*. This may mean that your possessions will not go to the people that you want.

### What are the requirements for making a will?

In Newfoundland and Labrador a law called the *Wills Act* sets out

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the legal requirements for making a valid will. There are additional requirements based on how the courts have interpreted the law.

### Some of the requirements are:

- A will must be in writing (for example, typed or written by hand) to be valid.
- A video tape or audio recording is not considered a valid will.
- The person making the will, the **testator**, must be at least 17 years of age to make a will.
- The testator must make his or her will free from pressure from other people.
- The testator must have **capacity**.

When dealing with wills the courts have interpreted **capacity** to mean that the **testator** must understand what he or she is doing, must remember and understand the type and the amount of property being given in the will, and must understand that the will is benefiting certain people and excluding others.

Most wills are signed by the person making the will, called the tes-

tator, and 2 witnesses. The witnesses need to see you signing your will and you must be present when the witnesses sign. The witnesses do not need to read your will.

If you handwrite and sign your own will it does not need to be witnessed to be valid. This is often referred to as a **holographic will**. If you cannot read or cannot write then two people must witness your will being read to you and they must sign the will.

These are just some of the requirements. When making a will it is best to consult a lawyer to ensure that the will meets all the legal requirements.

### Who can be a witness?

One of the witnesses will be relied on after your death to prove that your will is valid. For this reason, it is a good idea to have people witness your will who are likely to outlive you and who are mentally competent and old enough to understand a legally binding oath.

It is generally not a good idea to have a **beneficiary** or his/her

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spouse witness your will. If a **beneficiary** under the will or a spouse of a beneficiary acts as a witness, the gift to that beneficiary may not be valid.

### What can I put in my will?

*\*Please note: This is simply a list of items commonly included in wills. This list is not necessarily exhaustive.*

The Date: You should put the date you made the will in the will. If you have more than one will, this will make it clear which is your most recent will.

The Executor: In your will you should appoint an **executor**. This is the person responsible for carrying out the instructions in the will. This should be someone who is likely to outlive you, and it may be wise to appoint a back-up **executor** just in case the first person is not able to perform the role.

Your **executor** will be responsible for doing such things as proving your will is valid by having the will **probated**, filing your final income tax return and paying any taxes, ensuring that all debts are paid, and distributing your **estate** to your

**beneficiaries**. Your **executor** may also be responsible for making funeral arrangements and paying for the funeral out of your **estate**.

Being an **executor** can be time consuming, and can be very stressful for some people. It is a good idea to make sure beforehand that the person you name as your **executor** is willing to do this job.

Guardianship: If you have under-age children or adult children with disabilities who you are responsible for, you can identify who you want to be responsible for caring for these children.

You should discuss this with these people beforehand and make sure they are willing to act as the guardians to your children.

It is important to note that if there is a legal dispute over who should be appointed guardian of your children, the court is not bound by this appointment. The guardianship of your children will be determined based on the best interests of your children. Your wishes regarding who should act as guardian would be one of several factors to be considered.

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Distribution of your estate: Your will should contain clear instructions as to who you want to get your possessions and property after you die.

You may want to name a residual **beneficiary**, someone who gets what remains of your **estate**. This may make it easier for the **beneficiaries** of your will to access assets that were forgotten when you were writing your will or that you acquired after you wrote the will.

Providing for Dependants: You are legally required to provide for the financial support of your dependants after you die. Your dependants include your spouse, under-age children or adult children who are physically or mentally incapable of caring for themselves.

If you have a reason for not providing support for your dependants in your will, it is a good idea to write these reasons in a letter and keep this letter with your will.

Debts: You should identify in your will how you want your debts to be dealt with.

Common disaster: You can also say in your will how your **estate** should be dealt with if your pri-

mary **beneficiaries** die at the same time as you.

### **Special Considerations:**

Matrimonial Property: Under the *Family Law Act* your spouse is entitled to apply to the court for one half of your shared assets when you die. If the court finds that your spouse is entitled to more than he or she was given in your will, this will override your will.

Joint Bank Accounts: If you have placed money in a joint bank account for convenience and named an adult child or someone else as the joint account holder, that account will not necessarily be considered to be the asset of the joint account holder when you die. What happens to the money in that account will be determined by your intention. Whether you want the account to be gifted to the person named on the account, or to form part of your estate, you should make your intention clear (for example, stating your intention in your will). If the beneficiaries of the estate cannot agree on what the deceased's intention was, the issue will normally be determined by



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a court. The issue of joint bank accounts in the context of estate planning should be discussed with a financial advisor and/or lawyer.

RRSPs and RRIFs: Gifts of RRSPs and RRIFs in your will should be written very carefully. Usually when you open an RRSP or RRIF you name a **beneficiary** for that account. If you will an RRSPs or RRIFs to someone other than the beneficiary named on the policy this can create confusion and conflict for your heirs.

Funeral arrangements: Details of funeral arrangements can be included in a will, but since wills are not always read before the funeral it may be wise to also inform your next of kin and your **executor** of your wishes.

The Matrimonial Home: In Newfoundland and Labrador if you are married and own your home, in most cases, your spouse will receive title to the property when you die. This does not apply to a home you share with a common-law partner.

Life Insurance: If you wish to will the proceeds of a life insurance policy to someone other than the

person named in the policy it is a good idea for you or your lawyer to consult with your insurance company. In some cases the naming of a **beneficiary** in a life insurance policy is considered “irrevocable” and cannot be changed without the consent of the **beneficiary**.

### **What should I do with my will?**

You should put your will somewhere safe and let your loved ones and your **executor** know where your will is.

### **Do I need a lawyer to make a valid will?**

You don't need a lawyer to make a will. However, a lawyer's advice can be extremely helpful.

A lawyer can help ensure that your will meets all the legal requirements and that the meaning of the words you use in your will are clear and legally accurate. A lawyer can also help you by identifying different options for disposing of your **estate**.

An estate planner or a lawyer should also be able to give you valuable advice on minimizing the



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amount of income tax that will be charged to your **estate** after you die.

A lawyer's advice in drawing up a simple will likely won't cost too much. The more prepared you are when you visit your lawyer the less time the lawyer will need to spend on your will. This will help keep the cost down.

### Can I change my will?

You can change your will at any time, as long as you, the testator, have the legal capacity to do so.

If you make a new will your old will is normally considered to be cancelled.

You can also change part of your will by making a **codicil**. A **codicil** is an addition or amendment to a will. A **codicil** must meet the same requirements as a will to be valid.

You will also need to clearly identify the will that is being amended, usually by referring to the date it was made.

If you cross out part of your will, or add something to it after it has been signed this will not change the will unless the will is signed

and properly witnessed again near the alteration.

### Can I Cancel My Will?

You can cancel your will by writing a document stating your intention to cancel your will. This document must meet the same requirements as a will to be valid.

You can also cancel your will by destroying the original or by having someone else, on your instruction, destroy it. If your will is destroyed by mistake or against your wishes it remains valid.

### I just moved to Newfoundland and Labrador. Do I need to make a new will?

If you made a valid will in another place, it will remain valid if you move to Newfoundland and Labrador.

If you have moved you may want to review your will to ensure that it still accurately reflects your wishes and the possessions that make up your **estate**.

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### When should I consider updating my will?

Marriage: If you get married or re-married your will is considered to be cancelled unless it states in the will that you intend to marry the person you married. You will either need to make a new will, or make a **codicil** to your old will before the marriage.

Divorce or Separation: In Newfoundland and Labrador a divorce between married spouses, or separation from a common-law partner will not affect your will. In this case you may want to change the gifts given to your now ex-spouse.

Death of a Beneficiary: If a beneficiary of your will dies you may want to update your will to specify a new beneficiary.

In most cases if a beneficiary dies the gift to him or her is considered cancelled and the property that was being given becomes part of the residual estate.

If the beneficiary who dies is your child or sibling, the gift will normally go to that beneficiary's next of kin.

Birth of a Child: If you have a child this will also not affect your will. You may want to update your will to include your child.

Disposal of Assets: If you give away or sell something that is mentioned in your will before you die, the part of your will that refers to that item is void, but the rest of your will remains valid.

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## Probate and Administration

### What is probate?

**Probate** is the process of proving that a will is valid. The **executor** of an **estate** needs to apply for a grant of **probate** in order to distribute your **estate**.

### Does a will have to go through probate?

In most cases a will must go through **probate**.

A grant of **probate** acts as a guarantee that the will is valid and that the **executor** has the rights and bears the responsibilities of distributing the **estate**. This helps protect everyone involved in the process, including the **executor**.

If your **estate** is particularly small or if the **executor** is the only **beneficiary** it may be possible to avoid **probate**. However, an **executor** who acts without a grant of **probate** may be liable if the will he or she acted on is later proved to be invalid.

An executor may want to consider consulting with a lawyer to deter-

mine whether probate is necessary.

### How much does it cost to have a will probated?

The cost of an application for **probate** is a percentage of the value of the **estate**. The **executor** will need to provide an inventory and evaluation of the **estate** and the fees will be calculated accordingly.

### What if I do not have a will?

If you die without a will someone with an interest in your **estate**, a relative or a creditor, or a representative of the government will need to apply for a grant of administration in order to distribute your **estate**.

Your estate will then be distributed according to a provincial law called the *Intestate Succession Act*.

### What is a Grant of Administration?

A grant of administration gives someone the authority to act as an **administrator**. This person will do

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many of the same things as an **executor** does. He or she will have to pay any outstanding debts and distribute any remaining assets to your next of kin according to provincial law.

An administrator must be someone who lives in Newfoundland and Labrador. In most cases the administrator of an **estate** will need to post a bond.

**I do not have very much money. Is it worth it to make a will?**

Making a will ensures that your loved ones are able to access what you do have, that includes possessions that may be of more sentimental than financial value.

If you do not have a will your loved ones will need to apply for a grant of administration to access even a small **estate**, this process can be both expensive and time consuming.

## Enduring Power of Attorney

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spouse and young children, as well as adult children who are likely to inherit property from you.

### What the Words Mean

**Donor:** The person who gives someone else control over their financial affairs.

**Attorney:** The person who is given control over the donor's financial affairs.

**Legal Incapacity:** When a person is not mentally capable of understanding the effects of his or her actions.

**Guardian (Financial):** A person who is responsible for the financial affairs of a child or a mentally disabled or legally incapacitated adult.

**"A person with an interest in your estate":** This term refers to any person who is legally entitled to receive money from you, or is likely to inherit money from you when you die. This includes people you owe money to, people who are dependent on you for financial support, like your

### What is a Power of Attorney?

Power of Attorney is a written document that gives someone else authority to act for you in relation to your financial affairs. This can be for a specific purpose or for a specific period of time or it can be very general.

Unless it is enduring, a Power of Attorney is no longer valid if the person giving the Power of Attorney, the **donor**, becomes **legally incapacitated**. This means the **donor** is no longer mentally capable of understanding the effects of his or her actions.

### What is Enduring Power of Attorney?

An Enduring Power of Attorney is a special kind of Power of Attorney that continues to be valid if the **donor** becomes **legally incapacitated**.

# Enduring Power of Attorney

## Why should I make an Enduring Power of Attorney?

Making an Enduring Power of Attorney lets you decide who will manage your affairs when you are no longer able.

## What are the requirements for making an Enduring Power of Attorney?

In Newfoundland and Labrador the requirements for making a valid Enduring Power of Attorney are set out in a law called the *Enduring Powers of Attorney Act*.

The Act requires that to be an Enduring Power of Attorney a Power of Attorney must state that it applies during the **legal incapacity** of the **donor**.

An Enduring Power of Attorney needs to be signed by the **donor**, and by a witness. The witness cannot be the person being given the Power of Attorney or that person's spouse.

These are only some of the requirements. There are additional requirements set out in the *Enduring Powers of Attorney Act*.

## Do I need a Lawyer to make an Enduring Power of Attorney?

You can make a valid Enduring Power of Attorney without a lawyer, however, a lawyer's advice can be extremely helpful.

When you make an Enduring Power of Attorney you are appointing someone to take control of your finances. A lawyer can help you prepare this document in a way that protects your interests.

## Who can be my Attorney?

You may want to choose a friend or a family member to be your **attorney**.

You'll want to choose someone you trust who is willing and able to manage your financial affairs.

The person you choose to be your **attorney** must be legally capable and must be at least 19 years old.

## What does an Attorney do?

You can determine your attorney's duties based on what you put in the Power of Attorney. You can grant your **attorney** authority to do anything in relation to your fi-

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nances that you could do yourself. However, your **attorney** has a duty to act in a way that protects your best interests.

It may be a good idea to have your **attorney** regularly provide a review of your affairs to someone else you name. This can help reassure you and your family that the Power of Attorney is not being abused.

In Newfoundland and Labrador a Power of Attorney is limited to financial matters.

### **When does an Enduring Power of Attorney take effect?**

When you make an Enduring Power of Attorney you can specify when you want it to take effect.

It can take effect as soon as it is signed, on a specific date, or when a specific event takes place, for example, when you become unable to manage your own affairs.

### **Can I change or Cancel my Enduring Power of Attorney?**

As long as you are legally capable you can change your Enduring Power of Attorney, or revoke or can-

cel it entirely.

If you are **legally incapacitated a person with an interest in your estate** can apply to the court to have the person acting as your **attorney** changed.

### **What if my Power of Attorney is being abused, but I am no longer legally capable?**

A **person who has an interest in your estate** can apply to the court to require your **attorney** to provide a review of your finances.

A **person who has an interest in your estate** may also apply to the court to have your attorney relieved from his or her duties and have another attorney take over those duties.

### **What happens if I do not have an Enduring Power of Attorney and I become mentally incapacitated?**

If you do not have an Enduring Power of Attorney and you become incapable of managing your affairs, an application can be made



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under the provincial *Mentally Disabled Persons' Estates Act* in order to have a **guardian** appointed for you. The Act says which people may be entitled to bring such an application, and includes a **person with an interest in your estate**.

The person making an application to have a **guardian** appointed can propose a guardian in the application.

In some cases, the Registrar of the Supreme Court of Newfoundland and Labrador may be appointed to act as your **guardian**.



## Advance Health Care Directives

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tient undergoing involuntary mental health treatment to consult with health care professionals and monitor the treatment on the patient's behalf.

### What the words mean:

**Substitute Decision Maker:** A person named to make health care decisions for someone else when that person is no longer able.

**Health Care Decision:** A decision to consent, to refuse, or withdraw consent to any medical treatment.

**Health care professional:** A person licensed or registered to provide health care.

**Consent:** To agree to something. To legally consent a person must be competent to understand the decision that he or she is making.

**Competent:** When making a decision, able to understand the type of decision being made and the positive and negative effects of that decision.

**Patient Representative:** A person who has been designated by a pa-

### What is an Advance Health Care Directive?

An **Advance Health Care Directive** is a document that allows you to give instructions about your future medical care and/or designate an individual or individuals to make **health care decisions** for you if you are no longer able.

### Is an Advance Health Care Directive the same as a "Living Will" or "Power of Attorney for Personal Care"?

No. "Living Wills" or "Powers of Attorney for Personal Care" are similar to, but not the same as, **Advance Health Care Directives**. In Newfoundland and Labrador only **Advance Health Care Directives** are legally recognized.

## Advance Healthcare Directives

### When does an Advance Health Care Directive take effect?

Your **Advance Health Care Directive** only comes into effect and only remains in effect when you are not **competent** to make your own **health care decisions** or are incapable of communicating these decisions. This may be because of a permanent mental incapacity, like **Advance Alzheimer's**, or it could be because of a temporary physical condition, for example, you could be unconscious.

### Do I need an Advance Health Care Directive?

An **Advance Health Care Directive** gives you greater control over your health care when you are no longer able to make **health care decisions**. It can also relieve your loved ones of the burden of guessing what your **health care decisions** would be.

### What happens if I don't have an Advance Health Care Directive?

If you become unable to make

**health care decisions** for yourself and do not have an **Advance Health Care Directive** the *Advance Health Care Directives Act* sets out a list of who will be asked to act as your **substitute decision maker** and in what order. That person who acts as your substitute decision maker must have been in contact with you in the last year and must be willing and able to take on this responsibility.

If no family member is available or willing your **health care professional** will be asked to act as your **substitute decision maker**.

Your **substitute decision maker** will be required to make **health care decisions** for you based not on his or her own beliefs, but based on what he or she thinks you would want.

### How do I make an Advance Health Care Directive?

To make an **Advance Health Care Directive** generally you must be 16 years old and you must be **competent** to make a **health care decision**.

An **Advance Health Care Directive**

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must be in writing and must be signed by you, the maker, and at least two independent witnesses. If you are not able to sign someone else can sign for you and you must acknowledge this signature in the presence of at least two independent witnesses.

### Do I need a lawyer to make an Advance Health Care Directive?

A lawyer is not required to make a valid **Advance Health Care Directive**, however a lawyer's advice can be extremely helpful.

A lawyer can help ensure that the words you use in your **Advance Health Care Directive** have the intended legal meaning and that your **Advance Health Care Directive** meets the legal requirements.

### Do I need to consult with my doctor to make an Advance Health Care Directive?

It is not a requirement, but it is a good idea to consult with your doctor and other **health care professionals** when making an **Advance Health Care Directive**.

Your doctor can explain medical terms and treatments and can help you anticipate what **health care decisions** you or your **substitute decision maker** may face in the future.

### What can be included in my Advance Health Care Directive?

*\*Please note that this list is not necessarily exhaustive.*

**The Substitute Decision Maker:** In your **Advance Health Care Directive** you can name a **substitute decision maker**. This person will be responsible for communicating instructions that you have put in your directive to your **health care professionals**, and, when necessary, this person will make health care decisions for you.

You may also want to name a back-up **substitute decision maker** in case your original choice is unwilling or unable to act for some unforeseen reason.

The person you name as your **substitute decision maker** must agree, in writing, to accept this role.

**Instructions:** The instructions you put in your **Advance Health Care**

## Advance Healthcare Directives

Directives provide guidance for your **substitute decision maker**.

You can include general principles regarding your health care that you want your **substitute decision maker** to keep in mind when making **health care decisions** for you. For example, there may be some treatments, such as blood transfusions or organ transplant that, for personal or religious reasons, you do not want to undergo in any circumstance.

You and your doctor may also be able to predict some of the health care decisions that your **substitute decision maker** is likely to have to make for you. You can put specific instructions for dealing with these decisions in the directive.

### Who should be my substitute decision maker?

Your **substitute decision maker** must be at least 19 years old and must be **competent** to make **health care decisions**.

This person should be someone you trust, and someone who understands and respects your wishes regarding your healthcare.

It is helpful if this person has a good relationship and communicates well with your family and your **health care professionals**.

If you have an Enduring Power of Attorney it is a good idea to ensure that your **substitute decision maker** and your attorney can work together. There are some **health care decisions**, for example, selecting a long term care facility, that are also financial decisions.

### What happens if my substitute decision maker is unwilling or unable to act?

If the person you named as your **substitute decision maker** is unwilling or unable to act, the *Advance Health Care Directives Act* sets out a list of who will be asked to act as your **substitute decision maker** in his or her place. The rest of your Advance healthcare directive will remain valid.

If there are members of your family who you do not want to act as your **substitute decision maker** you can specify this in your **Advance Health Care Directive**.

You may also want to name a

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back-up decision maker in case the first person you named cannot or will not act.

### **Can I have more than one substitute decision maker?**

Having more than one **substitute decision maker** is a way to reduce the emotional burden and time commitment of on any one person. But if the people you choose do not work well together this can result in conflict and create more work and stress for everyone.

### **Can I change or cancel my Advance Health Care Directive?**

Yes. You can change the instructions in your **Advance Health Care Directive** by making a new directive. The new **Advance Health Care Directive** will cancel any earlier directives.

You can cancel your directive by writing a document saying that you want the directive to be cancelled. This must be signed by you and two witnesses.

You can also cancel a directive by intentionally destroying the original

or by having someone else destroy it for you in your presence.

### **When do I need to update my Advance Health Care Directive?**

It is a good idea to review your **Advance Health Care Directive** regularly. If your instructions regarding your health care change you may want to make a new **Advance Health Care Directive**.

You may also want to update your directive if your **substitute decision maker** is no longer able to take that role, for example if that person moves away or dies.

If you have named your spouse as your **substitute decision maker** and you are later divorced, the part of your **Advance Health Care Directive** naming that person will be considered cancelled, unless the Directive expressly states that it will continue in such circumstances.

### **What should I do with my health-care directive?**

Keep the original of your **Advance Health Care Directive** in a safe

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place.

You should give copies of your directive to your doctor and your **substitute decision maker** and make sure they know where the original can be found.

It is also a good idea to keep a copy of your **Advance Health Care Directive** in your wallet in case you need emergency medical treatment.

### When does an Advance Health Care Directive not apply?

Emergency Treatment: A **health care professional** normally has a duty to take all reasonable steps to find out if an incompetent or uncommunicative patient has named a substitute decision maker who is available. However, in cases of emergency health care, a **health care professional** may proceed with treatments that are medically necessary to preserve the patient's health or life, if a delay in obtaining consent from the substitute decision maker would pose a significant risk to the patient.

Involuntary Psychiatric Treatment: Neither you nor your **substitute de-**

**cision maker** has the authority to refuse involuntary psychiatric treatment or involuntary admission to a psychiatric facility.

If you must undergo involuntary psychiatric treatment you are entitled to name a **Patient Representative**. This person will be able monitor your treatment and your **health care professional** must consult with this person when making treatment decisions. This person does not, however, have the right to make health care decisions for you.



## Glossary of Terms

### **DISCLAIMER:**

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### **Wills and Probate**

**Administrator:** A person named by the court to manage and distribute the estate of a person who did not leave a will, did not name an executor, or named an executor who was unable or unwilling to perform that role.

**Bond:** An amount of money held by the court, or, in the case of a surety, promised to the court to ensure a task, such as the administration of an estate, is carefully completed.

**Beneficiary:** A person or organization given something in a will or designated to benefit from a trust.

**Bequest:** A gift of personal property, not real estate, made in a will.

**Codicil:** An addition or amendment to a will.

**Common-Law Relationship:** When two people live together in a marriage-like relationship, but are not legally married.

**Dependant:** Someone who relies on someone else for financial support. According to the law a person's dependants can include his or her spouse, underage children and mentally disabled adult children.

**Devise:** A gift of real estate made in a will.

**Dispose:** to give something away in your will.

**Estate:** Everything that a person owns.

**Execute:** To make a legal document valid by signing it.

**Executor/Executrix:** The person named as being responsible for carrying out the instructions in a will.

**Grant of Probate:** A document issued by the court that confirms that a will is valid and confirms that the executor has the authority to distribute the estate.

**Guardian:** (Financial) A person who is responsible for the financial af-

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fairs of a child or a mentally disabled or incompetent adult.

**Holographic Will:** A will in the handwriting of the testator.

**Intestate:** To die without a valid will.

**Issue:** The direct descendants of a person. This includes children, grandchildren, great-grandchildren and so on.

**Letters of Administration:** A document issued by the court that gives a person, referred to as the administrator, the authority to distribute the estate of a person who has died without a will or without appointing an executor.

**Probate:** The legal process of validating a will.

**Spouse:** Is usually used to refer to a husband or wife, but sometimes includes a common law or cohabiting partner.

**Testator/Testatrix:** The person who makes a will.

**Testate:** to die with a valid will.

**Trust:** When property is held by a person or organization for the benefit of another person.

**Trustee:** A person who holds legal title to property in trust for the

benefit of another person.

**Undue Influence:** When someone uses power or influence over another person improperly so that that person is unable to make a decision freely.

**Will:** A legal document that explains what you want done with the things you own after you pass away.

## Seniors and the Law

### Power of Attorney

**Attorney:** The person who is given control over the donor's financial affairs in a Power of Attorney.

**Donor:** The person who gives someone else control over their financial affairs in a Power of Attorney.

**Enduring Power of Attorney:** A Power of Attorney that is still valid if the donor becomes incapacitated.

**Limited Power of Attorney:** A Power of Attorney that is limited to only part of a person's financial affairs, or for a specific period.

**Incapacity:** When a person is not mentally capable of understanding the effects of his or her actions.

**Power of Attorney:** A document that gives a person the authority to handle the financial affairs of another person.

### Advance Healthcare Directives

**Advance Health Care Directive:** A document in which a person gives instructions for his or her future health care and/or names someone else to act as his or her substitute decision maker.

**Community Treatment Order:** An order from the court made under the *Mental Health Care and Treatment Act* which requires an individual to undergo involuntary psychiatric treatment without being committed to a psychiatric institution.

**Competent:** A person is competent to make a decision if he or she is able to understand the type of decision being made and the positive and negative effects of that decision.

**Consent:** To agree to something. To legally consent, a person must be competent to understand the decision he or she is making.

**Health Care Decision:** A decision to consent, to refuse, or withdraw consent to any medical treatment. This includes both physical and mental health care.

## Glossary of Terms

**Health care professional:** A person licensed or registered to provide health care.

**Living will:** A document, similar to an Advance Health Care Directive, that gives instructions for an individual's future health care. Living Wills are not recognized by Newfoundland and Labrador law.

**Next of Kin:** A person's closest relative. The relative that is considered next of kin in a specific legal context is determined by the relevant provincial law.

**Patient Representative:** A person who has been designated by a patient undergoing involuntary mental health treatment to consult with health care professionals and monitor the treatment on the patient's behalf.

**Power of Attorney for Personal Care:** A document, similar to an Advance Health Care Directive, that appoints a substitute decision maker for health care decisions. In Newfoundland and Labrador Powers of Attorney are limited to financial matters.

**Substitute Decision Maker:** The person named in an Advance Health Care Directive who is re-

sponsible for communicating the instructions contained in the directive to your health care professionals and making health care decisions for you when you are no longer competent to do so.



# Seniors and the Law

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