

The importance of Quebec's protection mandate

What would happen to you if you became unable to take care of yourself or your property without having signed a protection mandate?

Your loved ones would have to institute a number of legal procedures, and only a court of law would be able to decide on your protection. Depending on your level of incapacity, the court will decide on a protection measure and appoint someone to take care of you and/or your property. One of the following protection plans will be instituted for you:

Advisor to a person of full age:

- This plan is intended for people who can take care of themselves and administer their property but who need some assistance or advice for certain activities or on a temporary basis.
- The advisor is not in charge of administering the property of the person of full age.
- The court will list the acts for which the person requires assistance.

Tutorship for a person of full age:

- This plan concerns partial or temporary incapacity.
- The court will determine the degree of incapacity.
- The property tutor is charged with "simple administration,"¹ and is accordingly limited to the administration of presumed sound investments, which means that only certain types of investments can be made.

Curatorship for a person of full age:

- This plan concerns total or permanent incapacity.
- The property curator is charged with "full administration,"² except that when it comes to investments, he or she is also held to presumed sound investments.

You should sign a protection mandate in anticipation of your eventual incapacity. This will enable you to appoint one or more people in advance as mandataries (powers of attorney) to watch over you and administer your property.

Other significant benefits of the protection mandate

- The mandate does away with the long, costly process of opening a protection plan (advisor, tutorship or curatorship).
- It avoids the need to set up a tutorship council, which is required in the case of tutorship or curatorship. The tutorship council generally consists of three people who are close to the incapacitated adult.
- It means the appointed mandatary does not have to account annually to the tutorship council and the Curateur public.
- It enables you to choose exactly which duties and powers you will confer on your mandatary.

The content of the mandate is left to your discretion, but it should reflect your personal needs, your family situation and your interests. In addition to appointing people to represent you and the powers vested in them, it can also include provisions like the following:

- Naming a replacement mandatary if it becomes impossible for the original mandatary to execute the duties of the position
- Appointing a tutor for your underage children
- Your preferences in terms of housing
- Under certain conditions, the possibility of your mandatary making charitable donations and endowments on your behalf
- The use of your assets (cash, residence, furniture, vehicle) for the benefit of certain members of your family (spouse, dependent children, etc.)

¹ According to the Curateur public du Québec (the public curator), this power is limited to properly managing, safeguarding and preserving property.

² According to the Curateur public du Québec (the public curator), this consists in the power to administer, protect, and safeguard property and make it productive, to increase the patrimony, and to sell or mortgage property.

- Maintaining financial support for some of your loved ones
- Authorization to contribute to various plans for the benefit of your loved ones (e.g. TFSA, RESP or RDSP)
- Requirement for your legal representative to produce an inventory of your property
- Requirement for an annual accounting to a designated person
- Directives as to the management of a particular business
- Authority to exercise certain tax decisions
- The decision to compensate your mandatary or not
- Your preferences in terms of investments
- Consultation of a trusted person before certain important decisions are made (e.g. sale of your property)
- Your intentions as to your digital assets

Effective date

- Conditional on a ruling that confirms the incapacity further to a legal procedure called “homologation” before a court or a notary certified to act in this field.

Authorized forms

- Mandate prepared by a notary public, or
- Mandate signed before two witnesses with no personal interest in the document. Accordingly, neither the person appointed as a mandatary or substitute mandatary nor the person for whom the mandatary is to produce an accounting may be witnesses.

Updates

- Do review the provisions in your protection mandate from time to time, particularly if there are important changes in your life, such as a new marriage or union, the death of a close relative, or the purchase or sale of a property or business.

Conclusion

- No one is immune to eventual incapacity as a result of an accident, a degenerative disease or simple aging. Signing a protection mandate reflecting your personal needs and situation will protect your interests and those of your family.

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Published October 30, 2018.

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1809-1854_E (10/18)