



# Protecting Yourself from Financial Abuse

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Banks are very aware of the growing incidence of financial abuse of vulnerable people and can play an important role in raising awareness on the issue, including what their clients can do to protect themselves from financial abuse.

This set of articles describes financial abuse and provides tips and information for consumers about how to avoid becoming a victim. The Fraud Prevention section of the CBA website also offers further tips on credit card fraud, debit card fraud, identity theft, phishing, vishing, real estate fraud, financial scams and protection of personal information.

*Please consider obtaining legal advice for all matters related to POAs and planning for incapacity. This text only provides general information and does not constitute a legal opinion. Since the POA rules vary between provinces, the CBA strongly encourages you to seek advice from a legal expert before making any decision in these matters.*



## **Financial Abuse: What You Need to Know and Where to get Help**

### **What is financial abuse?**

Financial abuse occurs when someone tries to take or control what belongs to you for their own benefit, not yours. This can include your money, your property, or your personal information. Financial abuse is unethical, and in many cases it is also illegal.

### **Financial abusers — who are they?**

A financial abuser can be a trusted person in your life: a spouse, adult child, grandchild or other family member, caregiver, friend, or neighbour.

### **Examples of financial abuse**

A trusted person may be a financial abuser if they:

- put pressure on you to give or lend them money, or to give them access to your financial information,
- use a Power of Attorney for their own benefit,
- force or trick you into signing something, including a contract, Will, letter or guarantee,
- take things or money from you without permission,
- misuse your bank card or credit card, or have you take out a loan to help them,
- misuse joint bank accounts or pressure you to make your existing account a joint account,
- forge your signature on cheques, including pension cheques, or legal documents,
- sell or transfer your property against your wishes or interests, or
- refuse to return borrowed money or property.

### **Some warning signs**

- A trusted person takes an undue interest or involvement in your financial matters.
- Your statements show account withdrawals or transfers you did not do.
- A trusted person suggests you have your bank statements sent to them (or you stop receiving your bank statements).
- You start failing to meet your financial obligations, when you've never had problems before.

- A trusted person suggests that you make changes to important contracts – your Will, Power of Attorney, trusts, title to property, deeds or mortgages – that you do not want to make or are not in your best interest.
- You feel afraid of, or pressured by, a trusted person.

## How can you prevent it?

If you are able, do financial transactions yourself. Take advantage of telephone and online banking if it is difficult for you to get out.

When planning for your possible inability to manage your finances yourself, allowing a trusted person (or persons) to assist with your financial affairs can be helpful, but you must select your trusted person carefully.

Powers of Attorney, joint accounts or other arrangements may be useful, but you must be careful. It is generally safer to use a Power of Attorney – which allows a trusted person to act and make decisions for you and obligates them to act in your interest – instead of a joint account – which makes the trusted person the joint owner of your money and investments. Read more about these tools in Powers of Attorney: What Consumers Need to Know, Powers of Attorney: Bank Requirements, Powers of Attorney: Opening a Bank Account with a Power of Attorney, and Joint Accounts: Appropriate Use of Joint Accounts on the CBA website.

You can say “no” when someone pressures you for money or to buy something — even family members.

Make sure you understand every document you sign – do not sign blank documents and do not give anyone your bank card or PIN.

You can have pension cheques, or other sources of income, deposited directly into your bank account and have your bills debited directly out of your account or charged to your credit card.

## Where to get help

Remember, financial abuse is a violation of your rights. It is not your fault, and you can get help.

### Alberta: Victim Services Unit

780-427-3460 or toll free by first dialing 310-0000

### British Columbia: Seniors First BC

604-437-1940 or toll free 1-866-437-1940

### Manitoba: Seniors Abuse Support Line

1-888-896-7183

### Newfoundland and Labrador: SeniorNL

709-737-2333 or toll free 1-800-563-5599

### New Brunswick: Emergency Social Services

1-800-442-9799

### Northwest Territories: Seniors Information Line

1-800-661-0878

### Nova Scotia: Senior Abuse Information and Referral Line

902-424-3163 or toll free 1-877-833-3377

### Nunavut: contact the social services or health centre in your community or the RCMP at

1-867-979-0123

### Ontario: Seniors Safety Line

1-866-299-1011

### Prince Edward Island: Adult Protection Line

902-368-6717

### Quebec: Elder Mistreatment Helpline

1-888-489-ABUS (2287)

### Saskatchewan: Seniors Mechanism Info Line

306-359-9956 or toll free 1-888-823-2211

### Yukon: Seniors' Services/Adult Protection Unit

1-800-661-0408 (ext. 3946)

Call your local police.

Talk to your bank manager.

Report financial frauds and scams to the Canadian Anti-Fraud Centre:

1-888-495-8501 / [www.antifraudcentre.ca](http://www.antifraudcentre.ca).



## Powers of Attorney – What Consumers Need to Know

A Power of Attorney (POA) is a legal document that gives someone else (one or more persons) the legal right to act on your behalf. It's important to understand that the term "Attorney" does not mean "lawyer"; most people appoint a trusted person or persons such as family members or friends to act as their Attorney(s) under a POA.

### A POA can be:

- for property and finances, or for health purposes (this article only discusses POAs for property and finances),
- general (allows the Attorney to act for you in any legal or financial situation) or specific (allows the Attorney to act only for one transaction, e.g. sale of your house),
- limited or unlimited (e.g. limited to day-to-day banking transactions or unlimited for any financial or legal transactions),
- for a defined term or open-ended (may be limited to the time period you are out of the country/in hospital, or going forward indefinitely from the time the POA is signed),
- continuing/enduring or not (continuing/enduring refers to being in effect after you are incapable of handling your own affairs; with a non-continuing/enduring POA, the authority stops when you are no longer capable). In Quebec one must have a separate mandate in case of incapacity to set out instructions for handling affairs following incapacity. See information available from the Quebec government ([www.justice.gouv.qc.ca/english/publications/generale/procurat-a.htm](http://www.justice.gouv.qc.ca/english/publications/generale/procurat-a.htm)).

### Duties of the Attorney

The person to whom you give your POA (your Attorney) has a duty to act in your best interest. You can set out in the POA document the types of transactions that you want your Attorney to do for you or insert restrictions as to what they should not do. Your Attorney is required to keep detailed records of the transactions they complete on your behalf.

You can contact your bank to check the status of your accounts and you can hold the Attorney responsible for failing to manage your affairs as you directed.

## **Choosing your Attorney**

Your Attorney must manage your property and finances for your benefit and according to your wishes. Therefore it is very important that you choose an Attorney that you trust. As a safeguard, you may wish to appoint two attorneys to act together.

Each province has rules about POAs. You must make sure you have followed the rules or banks (and others) will not be able to follow the Attorney's instructions. If you move to a different province, you may need to revise your POA to meet that province's rules.

Once you have chosen an Attorney, it is helpful to ensure that they are aware of your wishes and priorities for your finances. Your Attorney should know this before needing to complete transactions on your behalf.

## **Setting up a POA**

While there are online and other generally-available forms and templates for a POA – and some banks provide forms for their clients' convenience – you should consult a legal professional to draft your POA.

It is not the policy of any bank to insist on clients using the bank's own form of POA. Bank forms may deal only with bank transactions and possibly only transactions with that bank. Unless you have consulted a legal professional, there is the potential that using a bank form might invalidate or conflict with the terms of earlier POAs and lead to unintended consequences. A valid, general POA will usually meet the bank's requirements. You can read more about the importance of setting up a valid POA in [Understanding Banks' Power of Attorney Requirements](#).

## **Revoking a POA**

Remember that you can revoke an existing POA and appoint a new Attorney at any time. You may want to do this if you have concerns about the way your Attorney is acting for you, or if your situation changes and you think the person who is currently your Attorney is no longer suitable. Or the current Attorney may no longer be available to act for you. If you revoke your POA, you need to tell your bank so they can update your records to reflect your choice. If you move to a different province or territory or outside of Canada, your existing POA may not be recognized in that new location.





## **Powers of Attorney: Bank Requirements**

Banks take the welfare of their clients very seriously, but they do not monitor all transactions that might be done by a client's Attorney, particularly in an online or telephone banking environment. That is why it is so important to select your Attorney carefully. If an Attorney's transaction comes to the attention of the bank and it appears unusual – for instance, if the Attorney pays substantial amounts to him or herself – the bank may try to confirm the transaction with you if possible (if you have capacity), ask the Attorney for additional information to better understand the transaction, or decline the transaction.

### **What do banks look for in a POA?**

Generally, banks will accept a POA that meets applicable requirements and gives the Attorney the ability to conduct the desired financial transactions. The POA may be general or limited or restricted in some way, as long as it permits the types of transactions you expect your Attorney to do. (Some banks have a form of POA you can use. Bank policies do not require you to use that form.)

Ideally you should consult a legal professional for advice on drafting a valid, general POA. The POA must meet all provincial or territorial requirements. These requirements vary from province to province. In Ontario, for example, the Substitute Decisions Act requires that:

- you, the grantor of the POA, must be capable – the Act sets out seven indicators of capability,
- the POA must be witnessed by two individuals, in your presence and each other's, and
- the witnesses cannot be the named Attorney, the Attorney's spouse or partner, your spouse or partner, your child or a person you treat as a child, a person whose property is under guardianship, or anyone under the age of 18.

### **Why would my bank refuse to act on a POA?**

Generally, banks carry out the instructions of your Attorney based on your valid POA. There are circumstances; however, when your bank may refuse to do so, including if:

- it doesn't meet the applicable legal requirements; for instance, a foreign POA may not be recognized under the law of the province or territory where your accounts are located,

- it is a limited POA that authorizes your Attorney to do only certain transactions (for example, deposit funds to and pay out from your bank account) and the Attorney tries to do something else (e.g. taking out a loan in your name),
- it has been issued for a limited period of time and that time has passed,
- you have more than one POA and the instructions are in conflict,
- you die, - POAs are only valid while you are living
- your Attorney instructs the bank to change the ownership of the account (for example, to make your account joint with your Attorney) unless the POA specifically permits your Attorney to do so,
- your Attorney instructs the bank to appoint or change the beneficiaries on any of your RRSPs or RRIFs, or
- certain transactions appear to be for your Attorney's own benefit (including large cheques payable to your Attorney, large cash withdrawals by your Attorney, and large transfers from your account to your Attorney's account), unless the POA specifically permits your Attorney to use your money for his or her own benefit.

## **What can I do if the bank refuses to accept my POA?**

If front-line employees have concerns about your POA or your Attorney's instructions, they are to escalate the matter for review to more senior staff within the branch and/or to other experts within the bank. Usually, the review can be accomplished internally within a few days. In some cases, however, particularly when conflicting or inadequate evidence is presented to a bank, the bank may require a court order to resolve the matter.

If your POA or your Attorney's instructions are escalated for review, bank staff normally advise the Attorney that the POA/instructions are being escalated for review and how long this review will take. Following the review, if the bank decides that it cannot act on the Attorney's instructions, it will state why and, if appropriate, what needs to be done to move forward.

Depending on the reason for rejection, there are several steps you or your Attorney may take including:

- If you are still capable:
  - doing the transaction yourself,
  - creating a new POA,
  - obtaining a legal opinion/confirmation to clarify any problems in the POA document,
  - obtaining a doctor's letter confirming that you were mentally capable on the date the POA document was signed and that you understood the concept of appointing a POA,

- if you are not mentally capable:
  - applying to the court. Your Attorney or some other interested person can apply to the court for appointment as your guardian/trustee

You or your Attorney can also make a complaint to the bank's Client Care Department or Ombudsman Office, or retain a lawyer. See the Resolving Problems with your Bank section on the CBA site.

## **What about bills that need to be paid?**

Banks generally allow payment of bills related to your personal living expenses (e.g. nursing home bills, rent, utilities) from your assets held with the bank even where it has questions related to a POA, your Attorney's instructions or your capacity. Your bank will try to take appropriate steps to reduce inconvenience while any issues are resolved.

If someone brings your bills to the bank to be paid, banks may consider allowing payment even without a POA – usually after trying to speak with you.





## Powers of Attorney: Opening a Bank Account

As part of the estate planning process, you may consider setting up a Power of Attorney (POA) to authorize someone else to manage your finances and property when you are unable to do so. For more information about Powers of Attorney, see Powers of Attorney – What Consumers Need to know, and Understanding Banks’ Power of Attorney Requirements.

You may wish to have someone else do your banking for you on your existing bank account – perhaps you are out of the country frequently or physically unable to do your banking yourself. You may not already have a bank account and need someone to cash cheques or make payments from an account on your behalf. It is possible for you to open an account and for someone else holding your POA to do your banking for you. But to do so, both of you must meet the legal requirements imposed on banks and other financial institutions for opening accounts.

When opening any type of bank account, banks and other financial institutions must comply with the requirements of a number of laws and regulations. The identification requirements under Canada’s anti-money laundering legislation (AML), the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its various regulations, are the main consideration. Essentially, under this legislation, financial institutions are required to ensure that they “know their customer” by confirming the identity of anyone who will be using the account.

The ability of a bank to open an account using a POA will vary depending on the circumstances, but generally the bank will require both the Attorney (the person given the authority to act on behalf of another person) and the grantor (on whose behalf the Attorney is acting) to provide identification as required by the AML regulations. This can be particularly challenging if the client (the grantor) is physically unable to visit the branch to allow the bank to confirm their identity.

Unless the Attorney provides sufficient evidence of the client’s mental incapacity, banks may attempt to meet with the client to confirm identity – even if a visit to the client’s home, a nursing home or a hospital is needed. Alternatively, the bank may appoint someone at the care facility to be its agent to confirm the client’s identity.

In some cases, where the bank is unable to meet with the client to confirm their identity, but it has an existing and positive relationship with the Attorney, the bank may open the account but the client will not be able to transact on the account until they go to the branch or are otherwise appropriately identified.

Unless you consent, banks will generally refuse any request by your Attorney to make your account a joint account, because that changes the ownership of your assets to the Attorney. With the authority of the POA, the Attorney can do your banking for you without becoming a co-owner of the account.



## **Joint Accounts: Appropriate Use of Joint Accounts**

As part of the estate planning process, in some provinces, some financial or legal advisors may encourage their clients to establish joint accounts with their heirs as an estate planning tool to avoid probate fees or the process itself.

Under certain provincial laws, there may be some benefits to this strategy although they are often outweighed by the risks described below. If you request in person (not through a Power of Attorney – see Opening a Bank Account with a Power of Attorney), that a joint account be opened and your bank has no reason to think that you are not capable of making this decision, they will usually open the joint account.

### **Be aware of the potential for abuse /conflict with a joint account**

If you open or make existing accounts joint with a family member or caregiver to make it easier for that person to assist with paying bills, etc., or for estate planning purposes to avoid probate fees, you make that person a co-owner of the funds in the account. This arrangement may be harmless if the other person is trustworthy and follows your wishes. But, if not, an abuser can take over the funds in a joint account and use them for their own benefit, not yours.

You should also consider that, if the joint account holder is sued or has a previous legal judgment or garnishment order against them or is engaged in a family law proceeding, your funds may be considered part of their assets and could be at risk. Conflict can arise if you or your Attorney do not agree with how that person is operating the joint account. On your death, further conflict can arise in your estate administration if the joint owner claims the funds in the joint account as their own, contrary to the distribution set out in your Will.

A safer alternative to a joint account is a Power of Attorney, which allows the Attorney to help with financial transactions without transferring ownership of the funds to the Attorney. Or, if the purpose of the account is for the other joint account holder to assist you with paying household bills, a joint account for that purpose could be established, but you could set up a bank transfer from another account where only the funds necessary for household bills would be transferred and accessible to the joint account holder. Keep in mind, however, that if you give a POA to the same person who is joint on the account, the Attorney may be able to move funds from your other account to the joint account, potentially creating the risks mentioned above.