

The Caregiver's Handbook

Section 3

LEGAL AND FINANCIAL MATTERS

This section offers a brief overview of some of the legal and financial issues faced by caregivers and care recipients, and where to turn for help. It includes details about specific types of legal documents such as a Will, Personal Directive, and Power of Attorney, as well as information on programs, benefits, and tax credits that can ease the financial burden which caregivers and care recipients face.

Help for Unpaid Caregivers
in Nova Scotia


Caregivers
Nova Scotia
for friends and family giving care

www.CaregiversNS.org

Legal Issues

This section offers a brief overview of some of the legal issues that are commonly faced by caregivers and care recipients. It is important to note that the laws are different in each province and territory. The information in this section applies specifically to Nova Scotia, and should not be taken as a substitute for speaking to a lawyer or other legal expert.

Most of the legal documents discussed in this section can be created using blank forms that are available at stationery or drug stores. However, it may be best to get advice from a professional.

In Nova Scotia, there are a few ways to get your legal questions answered, sometimes for little or no cost. We have highlighted the Legal Information Society of Nova Scotia (LISNS) below. They are not the only resource for legal help, but may be a good place to start to find the community legal resources you need in your area.

Finding Legal Information On the Internet or by Phone

The Legal Information Society of Nova Scotia (LISNS) is one place to turn to for help. Their website contains detailed information about each of the topics discussed in this section, and much more.

If you have a question about the law, you can call the Legal Information Line toll-free: 1-800-665-9779 or (902) 455-3135 in Halifax. This is a free service. A counselor will try to answer your question and tell you where to get help with legal problems. Please note: they cannot give legal advice.

Dial-a-Law provides legal information on a taped message service 24 hours a day at: (902) 420-1888. Use the keypad on your phone to select a topic and listen to a recording about a specific area of the law. This is a free service that may help to answer your questions about a particular legal concern. Some topics are also available in

audio format on their website: www.legalinfo.org. Their useful booklet *It's in Your Hands: Legal Information for Seniors and Their Families* is also available to download at: www.legalinfo.org/seniors

Finding a Lawyer

If you have additional questions or concerns about any of the topics in this section, it may be helpful for you to talk to a lawyer. Look for a lawyer who practices in areas like estates, wills, trusts, and elder law. Some lawyers may offer a free or low-rate introductory consultation.

Below are some suggestions on ways to find a lawyer:

- Look in your local phonebook or search online.
- A friend or family member may refer you to a lawyer.
- Your Employee Assistance Plan or union may offer help with finding a lawyer.
- You may qualify for a free 30 minute appointment with a lawyer through Access Legal Help NS, a pilot project of LISNS. To find out more, go to: www.legalinfo.org and click the 'Access Legal Help' logo.

The LISNS Lawyer Referral Service will give you the name and telephone number of a lawyer who will meet with you for 30 minutes for a fixed fee of \$20 plus tax. During this time, you can discuss your situation and get an idea of what your options are and what costs are involved.

Contact LISNS: (902) 455-3135 | Toll-free: 1-800-665-9779

reachAbility's Legal Referral Service connects persons with disabilities to a volunteer lawyer for a free one-hour consultation.

Contact reachAbility: (902) 429-5878 | Toll-free: 1-866-429-5878
www.reachability.org/legal/lrs

Power of Attorney

What is it?

A Power of Attorney is a legal document that allows you to name a person to make decisions on your behalf about money, assets, debts, and property. These decisions must be made for your benefit. You must be mentally competent (have legal capacity) to give someone Power of Attorney. However, even if you give someone Power of Attorney, *you can still make your own decisions until you become unable to do so.*

Decisions about medical care can also be part of a Power of Attorney or they may be set out separately in a Personal Directive, which is explained in more detail on page 52.

Why is it important?

By law, Nova Scotians aged 19 or older are assumed to be able to make their own decisions. However, an illness or accident can result in losing that ability, making it necessary for someone else to make decisions. This authority comes from you in a Power of Attorney.

How do I make one?

You can get a blank Power of Attorney form online or at stationery or drug stores. These documents are not expensive and may be appropriate in some situations. However, the safest way to make a Power of Attorney is with a lawyer. There are certain situations where you will need to get advice from a lawyer, such as if you own property like a house, a cottage, or a camp, or if you own property outside Nova Scotia. It is also very important to see a lawyer if there might be doubts raised about whether you had legal capacity and made your Power of Attorney voluntarily, by your own free choice.

Even if you write your own Power of Attorney, it is wise to review it with a lawyer.

What if I don't have one?

If you are not able to make decisions because of an illness or injury and you don't have a Power of Attorney, someone must go to court and ask to make decisions on your behalf. This is called **guardianship of the estate**. The person does not have to be a family member, and this court process is more time consuming and expensive than creating a Power of Attorney document by yourself or with a lawyer in advance.

Enduring Power of Attorney

An ordinary Power of Attorney gives another person the authority to make financial and legal decisions for you only while you are mentally competent. An Enduring Power of Attorney takes effect while you are mentally competent, and allows the person you have appointed to continue to make financial or legal decisions if you become mentally incapable.

Advance Care Planning**What is it?**

Advance care planning involves thinking about what your preferences are for future health and personal care should you become unable to make decisions about care for yourself. It involves communicating these wishes to friends and family, either verbally or in writing.

Why is it important?

An advance care plan can involve creating a Personal Directive and choosing your Substitute Decision Maker or Delegate. A Delegate will have the legal authority to speak for you if you cannot speak for yourself due to illness or injury. You can write the plan down, or make an audio or video recording. It is also a good idea to provide a doctor with a copy of the plan if it is written; if not, the doctor can record your wishes for you in your medical record.

It may be difficult to have these conversations, but it will help to ease stress for you, your family, and friends knowing that the decisions made for you are what you want.

Personal Directive

What is it?

A Personal Directive allows an individual to specify how personal care decisions will be made, and who will make them, should that individual become incapable of making decisions for him or herself. In a Personal Directive, personal care decisions refer to healthcare, residence, and support services, not financial matters.

Why is it important?

A Personal Directive will give you or your care recipient greater control over future decisions about personal care and who you want to carry them out if you become incapable.

How do I make one?

You can get a Personal Directive at many stationery or drug stores. They are not expensive and may be useful in many situations. However, the safest way to make this document is with a lawyer. You should also talk with your family doctor about who will make your personal care decisions and how to guide them.

You can also find instructions on creating a Personal Directive and download sample forms at: www.novascotia.ca/just/pda

What if I don't have one?

If you don't have a Personal Directive, your nearest relative will often be involved in making medical decisions for you. This may or may not be ideal. Depending on the situation, someone may have to go to court and ask to make personal care decisions on your behalf. This is called **guardianship of the person**. The person does not have to be a family member, and this court process can be time consuming and expensive.

If you want to ensure a particular person, known as a Delegate, has the authority to speak on your behalf, you must name that person in a Personal Directive.

Will

What is it?

A Will spells out how you want to distribute your money and property after your death. You also name your Executor, the person who will carry out your instructions.

Why is it important?

If you are a caregiver, try to make sure your care recipient has an up-to-date Will. Often it is the caregiver who plays a major role in distributing the care recipient's assets after death. This is a difficult and time-consuming task made more complex by the stresses of long-term caregiving. Having a current Will makes the task easier.

How do I make one?

You can get a Will form at many stationery and drug stores. These are not expensive and are appropriate for some situations.

However, the safest way to make a Will is to hire a lawyer. In some cases, you are required to hire a lawyer to advise you through this process (for example, if you own property in a different province or country).

It is also very important to see a lawyer if there are any doubts raised about whether you had legal capacity and made your Will voluntarily, by your own free choice, without being pressured by anyone. Even if you write your own Will, it is wise to review it with a lawyer.

What if I don't have one?

If you don't have a Will, the rules of the province will be used to determine who your property goes to and under what conditions. This is called **disposal of property**. One of your family members will likely be the Administrator - the person who manages your estate if you don't have a Will. You might not agree with the rules or be unhappy with the idea of a certain family member managing your estate. Making a Will is the best way to ensure that your wishes will be respected.

Joint Ownership

When one person is the owner of property or money, that person determines how the property is used or how the money is spent. In the case of joint ownership, more than one person can make these decisions. The two most common forms of joint ownership for caregivers are jointly owning a bank account and jointly owning a home.

Joint bank account

Usually the person named as the owner of a bank account can deposit money and take money out. Exactly what an owner can do is spelled out in their agreement with the bank. Often spouses have a joint account. They both put money in, and they both take money out.

In many families, a parent may invite an adult child to become a joint bank account owner to help with banking in times of illness or if the parent has trouble getting to the bank. In these situations, it is usually only the parent who is putting money into the account and the child can take money out to pay the parent's bills.

Pros and cons

While it is convenient for a caregiver and care recipient to have a joint bank account, there may be pitfalls. Here are a few tips for you and your care recipient:

1. Talk with your bank or credit union. There may be alternatives to having a joint account that will still meet your needs.
2. The care recipient should have complete trust in someone before adding him or her as a joint owner of the care recipient's bank account, as that person will have the right to take out money and use it, even if the care recipient deposited all the money.
3. If you are a caregiver for your parent and you are one of several siblings, you should be aware that your actions are open to scrutiny by the other siblings. Anything you do with the money must be for the benefit of the care recipient.

4. Discuss what is to happen to any money left in the bank account if one of the joint owners dies. For example, if the care recipient dies and has been the only person putting money into the account, will the money go to the surviving owner or pass through the Will? It is best to make your intentions clear to the whole family and to put your intentions in writing.

Home

Owning a major asset such as a home is significant. Generally, the owner can borrow money against it or sell it. There can be more than one owner, but it is the surviving owner of the home who inherits the property.

Many couples own their home together in a special type of ownership called **joint with right of survivorship**. This means that the surviving spouse inherits the home automatically. The transfer of ownership requires less paperwork and is easy and cost effective.

Often a widowed parent will invite an adult child to become a joint owner of the home in which the parent lives. In some cases, there is an understanding that the caregiver will inherit the house in exchange for giving lifetime care to the parent. A care recipient should get legal advice about whether joint ownership of the home is the best option based on his or her goals.

Pros and Cons

In spite of being cost effective and easy, there are some reasons not to own a home jointly:

1. Each owner must sign all documents required to deal with the house. For example, to borrow money against the house or to sell it, the child must agree with the parent's wishes even though the parent may still consider the house to be his or her sole property.
2. The property becomes part of the child's financial affairs, so the home in which the parent lives could become part of a divorce or business bankruptcy of the child.

3. Anyone who owns more than one residence may have to pay extra income tax. If you own a home and are invited by your care recipient to become a joint owner, you should consult a taxation expert before agreeing.

Why is this important for caregivers?

If the goal of joint ownership of assets is to have the caregiver inherit the house, the bank account, or both, make sure this intention is clear to all family members and get legal advice.

Financial Matters

Caregiving can have a significant impact on an individual's financial well-being. For example, both men and women may experience care-related employment consequences such as absenteeism, working fewer hours for pay, or having to leave the labour force. Women (especially those caring for a disabled child), men caring for a spouse, those approaching retirement age, those in poorer health, and those spending more time performing care tasks are especially at risk.¹³

This section offers a brief overview of some of the programs and benefits that may ease the financial burden faced by some caregivers or their care recipients. All programs, benefits, and amounts are current at the time of writing and are subject to change.

Programs and Benefits offered through the Nova Scotia Department of Health and Wellness, Continuing Care Branch

The benefits provided through Continuing Care can help both caregivers and care recipients. A few of these are described below. As mentioned on page 13, each District Health Authority is responsible for implementing and delivering these programs. For this reason, you may find slight differences in what services are available in your area and how they are provided.

Home Care – Nova Scotians can receive nursing services such as dressing changes, catheter care, intravenous therapy, and palliative care and a range of personal care and home support services.

Caregiver Benefit – This program is targeted at low-income care recipients who have a high level of disability or impairment as determined by a home care assessment. If the caregiver and the care recipient both qualify for the program, the caregiver will receive the Caregiver Benefit of \$400 per month.

Supportive Care – This program supports eligible Nova Scotians with cognitive impairments (difficulty thinking, concentrating, remembering) by providing them with \$500 per month for Home Support Services (personal care, respite, meal preparation, and household chores).

For more information on these and other programs and benefits or to set up an assessment, please contact Continuing Care:
Toll free: 1-800-225-7225 | www.novascotia.ca/dhw/ccs

You can also call us or visit our website.

Benefits Offered through Employment Insurance (EI)

Compassionate Care Benefit – This benefit is part of the Employment Insurance (EI) program. It provides a paid leave of up to six weeks for employees who need time to care for a gravely ill family member who has a significant risk of death within 26 weeks (six months). The benefit covers part of your salary. There is a two-week waiting period after you apply before payments begin.

Special Benefits for Parents of Critically Ill Children – Eligible parents who take leave from work to provide care or support to their critically ill or injured child can receive these special Employment Insurance (EI) benefits for up to 35 weeks.

For more information:
Toll-free: 1-800-622-6232 | www.servicecanada.gc.ca/eng/ei

Federal Tax Credits

There are several credits or amounts you can claim on your income tax return to help ease the financial burden on you and your care recipient. Some of these are listed below:

Child Disability Benefit (CDB) – This is a tax-free benefit for families who care for a child under age 18 with a severe and prolonged impairment in physical or mental functions. The CDB is paid monthly to individuals who are eligible for the Canada Child Tax Benefit (CCTB).

Disability Tax Credit – This is a non-refundable tax credit that provides tax relief for individuals who have a severe and prolonged impairment in physical or mental function.

Family Caregiver Amount (FCA) – If you have a dependent with an impairment in physical or mental functions, you may be eligible to claim an additional amount for one or more non-refundable tax credits, including spouse or common law partner, eligible dependent, children under 18, and the caregiver amount.

Medical Expenses Tax Credit – You can claim total eligible medical expenses for yourself, spouse or common-law partner, and your dependent children under 18 on Line 330 of your tax return.

Property Tax Rebate – Provides an annual rebate on municipal property taxes to help seniors remain at home. Eligible homeowners receive a 50% rebate (up to \$800) based on property taxes paid the previous year. The program is administered by Access Nova Scotia.

For more information about these and other tax credits or benefits, contact Canada Revenue Agency:

Toll-free: 1-800-959-8281 | www.cra-arc.gc.ca

Private Insurance Benefits

Critical Illness Insurance

Critical Illness Insurance pays a lump sum to you if you are diagnosed with a specific illness and survive. This money can help to pay for many things including medical expenses, home healthcare, home modifications, or other therapies or medications. You don't have to get approvals for these items or provide receipts. This type of insurance can benefit you or your care recipient.

For more information, ask your financial advisor or an insurance agent. You can also search the internet to find details of what specific providers offer. Some employers may also offer Critical Illness Insurance as an employee benefit.

Long-Term Care Insurance

The purpose of Long-term Care Insurance is to help pay the costs of care either in a nursing home or at home. It can give families options when choosing what type of care is needed or where that care will be provided.

For more information, ask your financial advisor or an insurance agent. You can also search the internet to find details of what specific providers offer. Some employers may also offer Long-Term Care Insurance as an employee benefit.