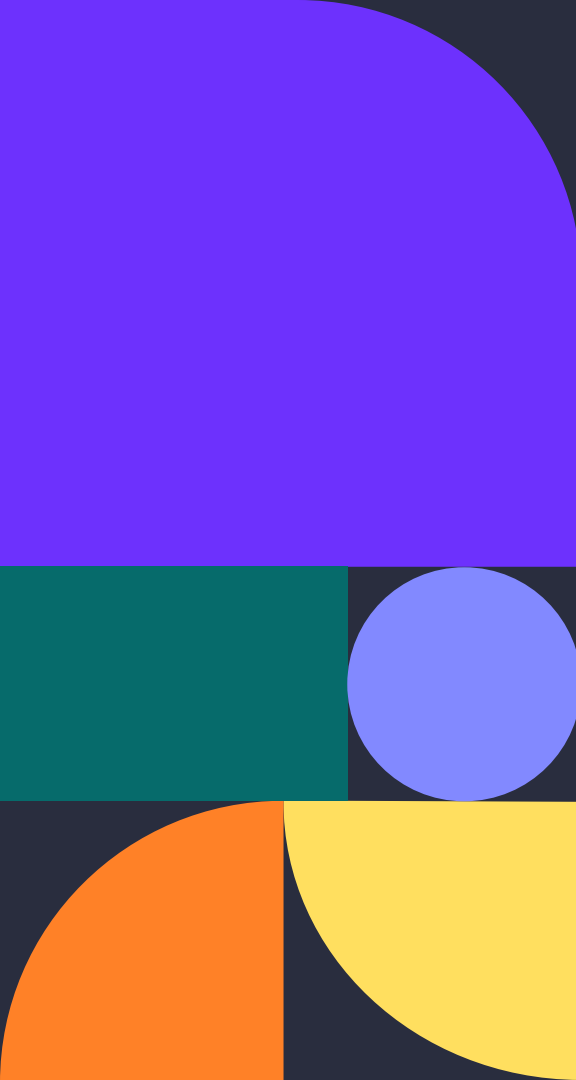
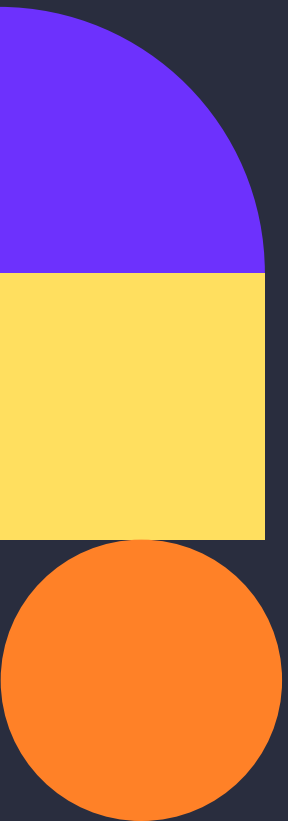




Wills and Powers of Attorney

Timothy Matthews, Henderson Family Law



Overview

01. **Wills and POA's 101**
02. **Things to consider before you make a will**
03. **Capacity issues, undue influence, elder abuse**
04. **Wills and living on reserve**



Wills and POA's 101

Wills

- A will is a legal document that says who gets a person's property after they die
- The property someone owns when they die is called their "estate". It can include:
 - The money in their bank account(s)
 - Real estate
 - Jewelry
 - Clothing
- If someone is married or has a common-law partner, they should make their own Wills

What are the requirements to make a will?

- 1) A person must be **at least 18 years old**, unless:
 - a) They are legally married
 - b) A member of the Canadian armed forces
 - c) A sailor

- 2) **Mentally capable.** This means that the person understands:
 - a) Why they are making a will and the impact it will have
 - b) How much property they have
 - c) Which dependents should be beneficiaries, and the claims the beneficiaries might have if the person does not leave them property in the will

What are the requirements to make a will?

- 3) Once the document is made, the testator (i.e., person who is getting their will made) must get **two witnesses to sign it**
- 4) The witness **cannot** be:
 - a) A beneficiary (i.e., someone who will get part of the testator's property after the testator dies)
 - b) A spouse of a beneficiary
 - c) Someone under the age of 18
 - d) Someone mentally incapable

How can someone make a will?

Use CLEO's Will
Guided Pathway

Use a lawyer

Use an online service

Write one themselves
(least advised)

What if someone does not make a will?

If someone dies without a will, Ontario has laws about who gets the property in that person's estate. These are called the "[intestacy rules](#)".

The intestacy rules leave nothing to:

- 1) A common-law partner
- 2) A stepchild the testator has not legally adopted
- 3) A charity or organization that the person supports

Intestacy Rules

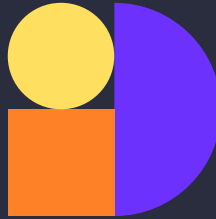
Was the deceased person legally married?	Did the deceased person have children?	What the intestacy rules say:
Yes	No	The estate goes to their spouse. But, if they separated before death, there are rules about whether their estate goes to their spouse . If they divorced before death, ex-spouse gets nothing
Yes	Yes	If estate is worth less than \$350,000, spouse gets everything. If estate is worth more than \$350,000, spouse gets the first \$350,000. The rest is divided equally between spouse and children. If they separated before death, there are rules about whether they get a share of the estate. If they divorced before death, ex-spouse gets nothing, and the children share the estate equally.
No	Yes	Their children split the estate equally
No	No	The estate goes to certain close living relatives based on a certain order . If no relatives, it goes to the Government of Ontario

CLEO's Resources



Steps to Justice has questions about:

- [Making a will](#)
- [If someone does not have a will](#)
- [Being an Estate Trustee with a will](#)
- [Being an Estate Trustee without a will](#)



Steps to Justice has tipsheets on:

- [Preparing a will](#) (available in [Chinese](#), [Arabic](#), and [Tamil](#))



Guided Pathways

- Has a [pathway](#) to help people make a simple will



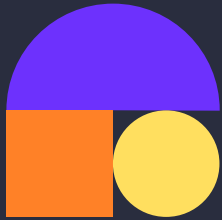
Power of Attorney

A power of attorney (POA) is a legal document that lets someone choose a person (or people) they trust to make decisions for them about their money and property or about their personal care

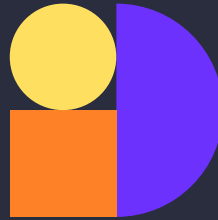
The person who gives someone the power to act on their behalf is called the “grantor”.

The person who is given the power to act on someone’s behalf is called the “attorney”. Attorney in this case does not mean lawyer.

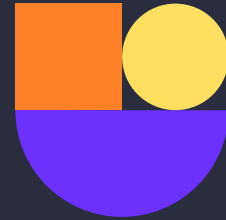
In Ontario, there are three types of POA:



A continuing power of attorney for property (CPOA)



A non-continuing power of attorney for property



A power of attorney for personal care (POAPC)

What does “mentally capable” mean?

Someone is mentally capable of **managing their property** when:

- 1) They understand information that relates to making a decision about their property; and,
- 2) They know what is likely to happen if they make or do not make a decision and what that means

Examples



The grantor knows what property they have and has a sense of what it is worth.

They do not have to know the *exact* value of each thing they own.

But, they should know what is valuable and what is not.



The grantor knows if someone depends on them financially and what they need to do for them.

For example, their children who are younger than 18.



The grantor understands that their property could lose value if their attorney does not do their job well.



The grantor knows that as long as they are mentally capable, they can revoke or cancel their POA.



The grantor understand the role and responsibilities of their attorney(s).



What is “property”?

An attorney can do the following for the grantor:

- Banking
- Sign cheques
- File their income tax
- Get a loan
- Buy, sell, or lease real estate
- Buy consumer goods and services

An attorney cannot:

- Make a Will for the grantor or change their Will
- Make/change who is a beneficiary in the grantor's insurance policy or a registered plan, such as a Registered Retirement Savings Plan (RRSP)
- Make a new Power of Attorney for the grantor

Power of Attorney for personal care

A legal document that lets the grantor choose a person (or people) they trust to make decisions for them about their **personal care** or **healthcare** if they become mentally incapable

Personal care: where the grantor lives, what food they eat, what they wear, their hygiene, and how to stay safe

Healthcare: healthcare treatments, moving into a long-term care home, personal services in a long-term care home

What does “mentally incapable” mean?

Someone is mentally incapable of **making their personal or healthcare decisions** when they do not understand:

- 1) The information needed to make a decision; or,
- 2) What could happen because of decisions they make about treatment or personal care



What are the requirements for making a POA?

For property: both the grantor and attorney must be at least 18 years old and mentally capable

For personal care: the grantor must be at least 16 years old, the attorney at least 18 years old, and both must be mentally capable

What are the requirements for making a POA?

Once the document is made, the grantor must get two witnesses to sign it.

The witnesses **cannot** be:

- The grantor's spouse, partner, child, or someone they treat as their child (i.e., stepchild)
- The attorney or the attorney's spouse or partner
- Someone under the age of 18
- Someone who has a Guardian of Property or Guardian of the Person

Who can be an attorney?

The short answer: anyone at least 18 years old and mentally capable.

However, it is a good idea for a grantor to choose someone they trust and that lives in the same location as them.

A grantor can choose more than one person to act as their attorney. They can give each attorney the same powers, or split powers among them. A grantor can name a substitute attorney in case something happens to the first one.

Some questions for a grantor to think about when choosing an attorney:

Can I trust them?

Are they good at handling money?

Will they care for my dependents in the same way that I would?

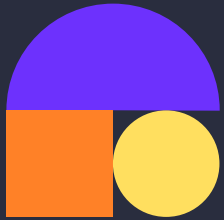
Are they willing and able to be my attorney?

Will they live longer than me?

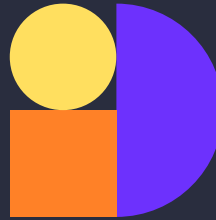
Will they expect to be paid?

Do they know my personal and healthcare preferences?

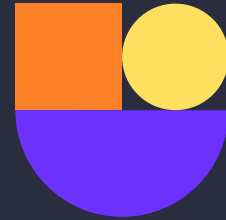
How can someone make a POA?



Use CLEO's [Power of Attorney Guided Pathway](#)



Use a Power of Attorney kit
(the Ministry of the Attorney
General has [one](#) for free, or a
person can buy one)



Use a lawyer

When does a POA come into effect?

For property:

A CPOA can come into effect whenever the grantor wants it to while mentally capable or when the grantor becomes mentally incapable.

A non-continuing POA comes into effect whenever the grantor wants it to while the grantor is mentally capable. It stops when the grantor becomes mentally incapable.

For personal care:

A POAPC comes into effect when the grantor becomes mentally incapable.

What if someone does not make a POA?

For property:

Someone in the person's life may have to go to court to be appointed their "Guardian of Property".

The Office of the Public Guardian and Trustee may be appointed their "Guardian of Property".

For personal care:

Someone in the person's life may have to go to court to be appointed their "Guardian of Personal Care".

The Office of the Public Guardian and Trustee may be appointed their "Guardian of Personal Care".

If the person is hospitalized and does not have a POAPC, Ontario law says doctors can ask someone in the person's life to make healthcare decisions for them. This is called being a "substitute decision-maker".

Hierarchy of who can be a substitute decision-maker for healthcare decisions

1. Guardian of the Person, if the person has one

2. Attorney named in Power of Attorney for Personal Care

3. Representative appointed by the Consent and Capacity Board

4. Spouse or partner

5. Parent or child

6. Brother or sister

7. Any other relative

8. The Office of the Public Guardian and Trustee



CLEO's Resources

Steps to Justice has questions about:

- [Powers of attorney for property](#)
- [Powers of attorney for personal care](#)

Steps to Justice has tipsheets on:

- [Preparing a continuing power of attorney for property](#)
- [Preparing a power of attorney for personal care](#)

CLEO has print publications on:

- [Continuing power of attorney for property](#)
- [Power of attorney for personal care](#)

Guided Pathways has a [pathway](#) to help people make a CPOA or POAPC



Things to consider before making a will

- 1) Relationships between executors and beneficiaries
- 2) Arrangements for dependents
- 3) Assets passing outside of the estate
- 4) Any potential concerns regarding beneficiaries (i.e., age, disability, ability to manage finances)



Capacity, Undue Influence, Elder Abuse

Capacity

- Legal tests for creating or revoking a will or POA
- Timing of capacity determination
- Who determines capacity
- What to consider when capacity may be an issue

Undue Influence and Elder Abuse

- Influence must be 'undue'
- Susceptibility of individuals with mental or physical impairments
- Vulnerability of certain elderly individuals
- More likely when there is diminished capacity

Three teal semi-circles of increasing size are arranged horizontally on the left side of the slide. The largest semi-circle is on the right, and the text is overlaid on its right edge.

Wills and Living on Reserve



Wills and Living on Reserve

- *Indian Act* may apply to the estate of certain individuals
- Individuals who are Status or are eligible to have Status
- Ordinarily reside on a First Nation
- Can depend on if *Indian Act* provisions are still applicable to the First Nation



Wills and Living on Reserve

- Executor or family will need to contact Indigenous Services Canada
- Differences with land located on reserve
- Need for approval of Band and Minister to transfer and possess land
- Different intestacy rules

Thank you!

Timothy Matthews, Henderson Family Law
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<https://www.hendersonfamilylaw.ca/>

CLEO's Wills & POA Resources

Helen Anderson & Misha Hossain

Powers of Attorney resources – stepstojustice.ca



A partnership led by CLEO

HIDE THIS WEBSITE ✕

Français



Steps to Justice
Your guide to law in Ontario

Legal Topics ▾

Guided Pathways ▾

Latest Updates



Wills and Powers of Attorney

Wills

Power of Attorney for Personal Care

Power of Attorney for Property



Wills and Powers of Attorney

Power of Attorney for Property

 Try these tools ▾



Use our [Guided Pathways](#) to make a Power of Attorney to give someone power to make decisions about your property.

Read these [tip sheets](#) to learn what you need to make a will or power of attorney.

 Try these tools ▾

 Find Services ➕

 **Guided Pathways**

 **Guided Pathway to make a power of attorney**

Make or cancel a power of attorney.

 **Tools & Resources**

 **Print**

 **Share**

 Administration
Ontario
Attorney

 **LIVE CHAT**

Power of Attorney for Property

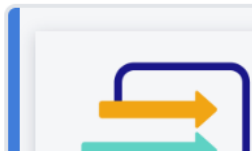


Do I need a Power of Attorney for Property?

NEXT STEPS

1. Think about what you need >
2. Understand how an attorney makes decisions >
3. Learn what can happen if you don't have a Power of Attorney >
4. Get legal help >

A **Power of Attorney for Property** is a legal document that lets you choose someone you trust to make decisions for you about your money and property.



Guided Pathway to make a power of attorney
Make or cancel a power of attorney.



Find Services



Related Questions

How do I make a Power of Attorney for Property?

Can I change or cancel my Power of Attorney for Property?

How do I find a lawyer or paralegal to help with my legal problem?



Guided Pathways



Guided Pathway to make a power of attorney

Make or cancel a power of attorney.



Print



Share



All Power of Attorney for Property questions

- Do I need a Power of Attorney for Property?
- How do I make a Power of Attorney for Property?
- Can I change or cancel my Power of Attorney for Property?
- What does an attorney for property have to do?



All Power of Attorney for Personal Care questions

- Do I need a Power of Attorney for Personal Care?
- How do I make a Power of Attorney for Personal Care?
- Can I change or cancel my Power of Attorney for Personal Care?
- What does an attorney for personal care do?

Power of Attorney Tipsheets



Preparing your Power of Attorney for Personal Care

This tip sheet helps you gather information to make a **Power of Attorney for Personal Care**. This is a legal document that lets someone, called your **attorney**, make decisions about your personal care and health care.

Your attorney can make decisions **only** if you are **not** mentally capable. Being mentally capable means that you understand:

- the information you need to make a decision about treatment or personal care, and
- what could happen if you do or do not make that decision.

Personal care decisions can include where you live, what you eat, what you wear, your washing and bathing, and keeping you safe.

Health-care decisions may be about medical treatments or personal care services in a long-term care home.

Talk to a lawyer about any questions you have.

Choose your attorney	Tips
☐ Choose a suitable person. Ask if they agree to be your attorney.	Your attorney can be a family member, a close friend, or anyone else you trust. Think about who will: • be available when you need them • talk to you about your wishes • understand your personality, values, and beliefs • be able to make decisions based on what they think you would want
☐ Decide if you want more than one attorney. If you do, say how they will make decisions.	

This tip sheet gets you started. You will need more information about powers of attorney.

Read more at stepstojustice.ca/POA-PC.

And there are different ways to make a power of attorney.

Check out CLEO's Guided Pathway for making a power of attorney at stepstojustice.ca/GP-POA.

Preparing your Continuing Power of Attorney for Property

This tip sheet helps you gather the information you need to make a **Continuing Power of Attorney for Property**. This is a legal document that lets someone make decisions about your property. That person is called your **attorney**.

Unless you say something different in your Continuing Power of Attorney for Property, your attorney can manage your property while you are mentally capable. And they continue doing this if you become incapable.

You are **mentally capable** of managing your property when:

- you understand information that relates to making a decision about your property, and
- you know what is likely to happen if you make or do not make a decision and what that means.

Talk to a lawyer about any questions you have.

This tip sheet gets you started. You will need more information about powers of attorney.

Read more at stepstojustice.ca/POA-Property.

And there are different ways to make a power of attorney.

Check out CLEO's Guided Pathway for making a power of attorney at stepstojustice.ca/GP-POA.

Choose your attorney	Tips
☐ Choose a suitable person. Ask if they agree to be your attorney.	Choose an adult you trust to manage your property. It is best if they live in Ontario.
☐ Decide if you want more than one attorney. If you do, say how they will make decisions.	This might be a family member or close friend. Or you could choose a professional like a lawyer, accountant, or trust company. Your attorney must make sure that your finances are looked after. This includes financially supporting you and your dependants, paying your debts, and making any ongoing payments like a lease.



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Health and Disability

Continuing Power of Attorney for Property

A **Power of Attorney for Property** is a legal document that lets someone make decisions about your property. This person is your **attorney**. In Canada, attorney does not usually mean lawyer.

Property includes your money and everything you own. It also includes anything that only you have the right to use, such as an apartment you rent or a car you lease.

There are **2 types** of Powers of Attorney for Property.

Continuing Power of Attorney for Property

This pamphlet talks about a **Continuing Power of Attorney for Property**. This power of attorney lets your attorney act for you if you are mentally capable. And they **continue** to act if you become mentally incapable of managing your property.

If you want your attorney to act for you **only** when you are **mentally incapable**, you can say this in your power of attorney.

General Power of Attorney for Property

A **General Power of Attorney for Property** lets your attorney manage your property only while you are mentally capable. For example, you might want to do this for a limited time while you are sick or on vacation.



CLEO

Wills and Powers of Attorney



Power of Attorney for Personal Care

A **Power of Attorney for Personal Care** is a legal document that lets someone make decisions about your health and personal care. This person is called your **attorney**.

Read about giving someone power to make decisions about property in **Continuing Power of Attorney for Property**. Order it for free or read it online at cleo.on.ca/POA-P.

Read about making a **will** to say who gets your property when you die. Visit stepstojustice.ca/wills.

When does my Power of Attorney for Personal Care start working?

It starts working when you're no longer mentally capable of making some or all decisions about your health and personal care.

You're mentally capable of making a decision about your health and personal care when you understand:

- the information you need to make the decision, and

Guided Pathway for creating a power of attorney



MY PROGRESS: Who is this guided interview... ▾

SAVE AND EXIT

Who is this guided interview for?

You can use this interview to make:

- a **Continuing Power of Attorney for Property**
- a **Power of Attorney for Personal Care**
- a **revocation of a past Power of Attorney**

You can click on the names of these documents to learn more about them.

Don't use this interview if:

- you're younger than 16 and want to make a Power of Attorney for Personal Care.
- you're younger than 18 and want to make a Power of Attorney for Property.
- you don't live in Ontario.
- you want to express wishes about what will happen after you're dead. To do that, you'll most likely want to create a will. If you want to be an organ-donor, you can sign up on [the Government of Ontario website](#).

Continue

3 Personal information

2 Choosing a Power of Attorney

1 Introduction



Make a will

Show: All ques

What is a will and what happens if I die without making one?

What do I need to think about when making a will?

What are probate fees and can I reduce them?

When should I update my will?

No will

What is a will and what happens if I die without making one?

I'm married. What happens if I die without a will?

I'm not legally married. What happens if I die without a will?

My loved one died without a will. Can I apply to be their estate trustee?

How do I apply to be an estate trustee without a will?

Beneficiaries

What can I do if someone died and I do not agree with what I'm getting from the estate?

Estate trustee with a will

I've been named an estate trustee in a will. What do I have to do?

I've been named estate trustee in a will. How do I apply for a certificate?

Estate trustee without a will

My loved one died without a will. Can I apply to be their estate trustee?

How do I apply to be an estate trustee without a will?



Preparing your will

This tip sheet helps you gather the information you need to make a **will**. A will is a legal document that says what happens to your property after you die.

If you die without a will, the law says what happens to your property.

Talk to a lawyer about any questions you have.

This tip sheet gets you started. You will need more information about wills. Visit stepstojustice.ca/wills.

And there are different ways to make a will. Check out CLEO's Guided Pathway for making a will at stepstojustice.ca/GP-wills.

Choose an estate trustee	Tips
☐ Choose a suitable person. Ask if they agree to be your estate trustee.	Your estate trustee carries out the directions in your will. They may also be responsible for other things that must be done when you die, like arranging your funeral and paying your debts and taxes.
☐ Decide if you want more than one estate trustee. If you do, say how they will make decisions.	There are rules your estate trustee must follow. For example, if they do not manage the estate properly, a beneficiary or someone else could take them to court. It is a big responsibility and can last for years.
☐ Decide if you want a substitute estate trustee.	Choose a reliable adult you trust. It is best if they live in Ontario. They can be a friend or family member. Or you can choose a trust company or a professional like a lawyer or an accountant.
☐ Get the full legal name and contact information, including a mailing address, for all your estate trustees. And get any other names they used in the past.	If you name more than one estate trustee, they must make all decisions together. You can change this in your will. For example, you could say which one decides if they do not agree. A substitute estate trustee acts if your other estate trustees are not willing or able to. The law says that an estate trustee can take "fair and reasonable" pay for their work, unless you say something else in your will. The law sets a rate for how much this usually is. It is paid from your estate.

Available in:

- English
- French
- Arabic
- Simplified Chinese
- Tamil

Guided Pathway for creating a simple will



MY PROGRESS: About this guided interview The next... ▾

SAVE AND EXIT

About this guided interview

The next few pages have important information about how this guided interview works and who it's for.

After these screens, there is a short introduction which will walk you through how a will works.

What this interview does

This interview helps you create a simple **will**. A will is a legal document that says who gets your **estate** after you die. The **property** you own at the date of your death is called your **estate**. A will also lets you leave directions about things like who you would like to be guardian of your **minor children** or who you want to take ownership of your pets.

If you're not sure whether or not to use this interview, talk to a lawyer before you start.

Continue

Helping someone create a will

Learn More

2 Choosing executors

1 Personal information

Introduction

Get these resources

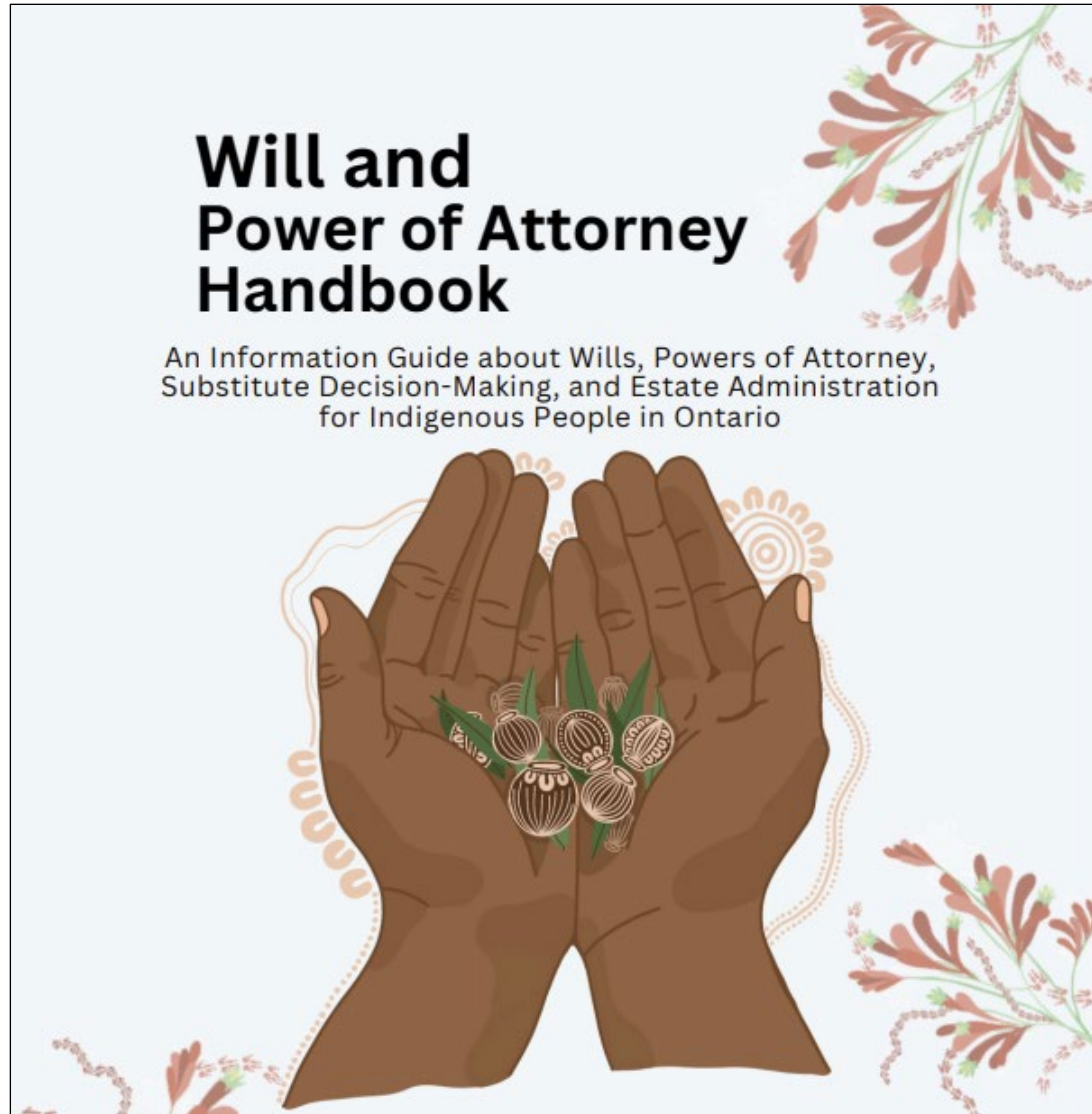


stepstojustice.ca

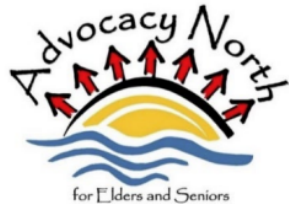
stepstojustice.ca/gp

cleo.on.ca

Information Guide for Indigenous People in Ontario



Creating a will while living on a reserve



Advocacy North for Elders & Seniors
Sudbury Community Legal Clinic
272-40 Elm Street
Sudbury, Ontario

Building a Basic Will while Living on a Reserve

Will Kit



[ABOUT PBO](#)[GET LEGAL HELP](#)[VOLUNTEER](#)[BLOG](#)[CONTACT US](#)[DONATE](#)[#100PERCENTA2J](#)[GATEWAY REPORT](#)

Powers of Attorney

THE HOTLINE CAN HELP YOU CREATE POWERS OF ATTORNEY

Would you like help creating a Power of Attorney? Do you have questions about Powers of Attorney that you would like to ask a lawyer? Call our [Free Legal Advice Hotline!](#) Available Monday to Friday mornings, from 9:00 AM to 1:00 PM.

1-855-255-7256





info@cleoconnect.ca