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## The Importance of Safeguarding your Original Will and Powers of Attorney

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When a loved one is ill or has passed, it is a very difficult time for all. In order to avoid conflicts it is important to have all documents in place and to know where the originals are being kept. The most important documents to have are Powers of Attorney, which are documents that are valid during a person's lifetime, and a Will which outlines an individual's wishes for their estate.

### Powers of Attorney for Property and Personal Care

There are two types of Powers of Attorney that everyone should have in place: a Continuing Power of Attorney for Property (PoAP) and a Power of Attorney for Personal Care (PoAPC).

The *Substitute Decisions Act* governs the use of the PoAP and PoAPC and states when they become active. It is important to understand that the PoAPC is only valid once the grantor is incapable of making decisions for him or herself. The PoAP on the other hand is valid the moment it is executed which means that an original (or a certified true copy) PoAP can be used immediately after it is signed. A notarized copy means that a lawyer has viewed the original and made a copy and certified it to be a true copy of the original. An (un-notarized) copy of the PoAP is not accepted by financial institutions; therefore, it is critical to have the original or the notarized copy of the document to be able to act for your loved one. When dealing with property in Ontario, you must have an original PoAP.

An individual can have more than one originally signed PoAP and PoAPC – in fact, legal professionals often suggest that an individual have up to 4 originals for two reasons: (1) the financial institution or doctor may want to keep an original; and (2) once the individual becomes incapable, they can no longer execute new Powers of Attorney.

Originals are key when dealing with property, financial institutions, medical professionals, etc. If a lawyer has retained an original Power of Attorney, they can always create notarized copies for a financial institution, for example. Without the original, it is not possible to create notarized copies.

### Will

A Will is a document that outlines your instructions for the distribution of your assets after your death. Unlike the Powers of Attorney, there can only be one original Will. As your original Will is the key to managing your estate, its safekeeping is critical. Lawyers will often keep original documents for their clients to ensure the documents are not lost or destroyed. Lawyers have very strict retention rules for original documents which are outlined by the Law Society of Ontario.



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Losing an original Will can be a costly mistake for an estate. A recent court case in Ontario confirmed that when an original Will is missing the presumption is that it was intentionally destroyed. If an individual dies without a Will they are said to have died "intestate" which means that the legislation will dictate how that individuals assets will be distributed to their next-of-kin. Unless there is evidence to confirm that a lost Will was NOT intentionally destroyed, and if the individual did not have a previous valid Will, the individual will be found to have died intestate. Therefore, safekeeping of the original Will is of utmost importance to ensure the protection of your estate for your loved ones.

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