

IMPLEMENTING A PROTECTION MANDATE

When a person becomes incapacitated and has a protection mandate, you must respect his instructions and have the mandate homologated.



What to do when a person becomes incapacitated and owns a protection mandate?

YOU MUST HAVE IT HOMOLOGATED BY THE COURT!



WHAT IS THE PURPOSE OF A PROTECTION MANDATE?

The purpose of a protection mandate is to safeguard the interests of an incapacitated person and his family.

A person is considered legally incapacitated when he is unable to make decisions or to act on his own behalf because of his health.

Such a mandate must generally be respected because it contains the person's wishes regarding decisions that must be made about him. For example:

- + The identity, powers and responsibilities of the mandataries he has selected. The mandataries are the people who will make decisions in his place.
- + The care he wants to receive and the **place** where he wishes to live.
- + The way his **property, money and debts** are to be managed.
- + The **tutor** for his minor **children**.
- + The managing of his **business**, if needed.

The protection mandate is also called a "mandate in anticipation of incapacity" or "a mandate in case of incapacity".

WHEN DOES A PROTECTION MANDATE BECOME EFFECTIVE?

When a person becomes incapacitated, the law requires that the courts render a judgment on the protection mandate, whether it is **notarized or not**. The judgment gives effect to the protection mandate and allows it to be used.

To render judgment, the court will analyze whether:

- + The mandate is valid, i.e. whether it meets the requirements of the law.
- + The person should be declared incapacitated and his degree of incapacity.
- + The designated mandatary is able to take on the responsibilities indicated in the mandate.
- + The courts must deal with issues other than those indicated in the mandate so that the incapacitated person is properly taken care of.
- + The mandate is complete.
- + The mandate must be homologated in whole or in part.

*Only a court may declare a person incapacitated and homologate his protection mandate. **Homologation** consists in officially confirming the protection mandate and making it effective so that it may be used.*

HOW DO I HAVE A PROTECTION MANDATE HOMOLOGATED?

Your notary will advise you on the administrative and legal steps needed to obtain a judgment homologating the protection mandate.

Administrative procedures

Your notary will make sure the following administrative procedures are performed:

1. Obtain a medical evaluation and psychosocial evaluation from a medical establishment regarding the person considered to be incapacitated.
2. Inform the appropriate people and the members of the family of the situation.
3. Submit a search request to the Register of Mandate Dispositions of the Chambre des notaires and the Barreau du Québec to check whether a protection mandate exists.

ONLY A COURT OF LAW MAY DECLARE A PERSON INCAPACITATED AND HOMOLOGATE HIS PROTECTION MANDATE.



Judicial procedures

Your notary will draft the application for homologation that will be submitted to the court.

He will prepare the documents needed in court and will keep you informed at every phase of the proceedings.

Among other things, he will:

- + Prepare the application to homologate the protection mandate of the person considered incapacitated.
- + Obtain the affidavits required for filing the application (for example, if the mandate is not notarized, a witness must attest that the signature on the mandate is indeed that of the person considered incapacitated).
- + Open a court file.
- + Inform in writing the people who by law must be advised of the situation (including the person considered incapacitated, a member of his immediate family, the person appointed as mandatary and the Curateur public.
- + Question the incapacitated person in the manner stipulated by law.
- + Submit the file to the court.

Once the protection mandate is homologated by the court, your notary will explain to the mandatary his duties and responsibilities and will answer all his questions.

WHAT ARE THE MANDATARY'S RESPONSIBILITIES?

The mandatary's responsibilities are generally indicated in the protection mandate. The court will sometimes decide to spell out their limits or modify them.

The mandatary must therefore act according to the powers set out in the mandate or defined by the court. For example, he may have to take decisions regarding:

- + Where the incapacitated person will live
- + His safety
- + His daily needs (food, clothing, hygiene)
- + Care required because of his health
- + Paying expenses (electricity, food, lodging)
- + Collecting income (old age pension, allowances)
- + Managing his assets and debts (house, bank account, investments)
- + His rights or his protection

The mandate may designate **one or several mandataries** to make all decisions. For example:

- + one mandatary may be responsible for decisions concerning the incapacitated person's personal needs; and
- + another mandatary may be responsible for managing the property, money and debts.

WHO OVERSEES THE MANDATARY?

The mandatary's conduct and administration may be monitored, for instance to prevent any abuse.

The **protection mandate** may indicate how the mandatary will be supervised or may restrict some of his powers. For example, the mandatary may have to account to certain people identified in the mandate.

Moreover, the **Curateur public** may investigate and intervene when someone reports a failure to abide by the mandate.

If the incapacitated person signed a power of attorney before becoming incapacitated, it remains valid during the judicial process. However, as soon as the judgment is rendered, the power of attorney is no longer valid.

HOW TO PREPARE?

INFORMATION TO COLLECT

- The contact information, date of birth and social insurance number of the person considered incapacitated
- His birth certificate
- The documents regarding his civil status (*marriage certificate, marriage contract, judgment of divorce, etc.*)
- The names and contact information of the mandataries named in the mandate and of a member of the incapacitated person's immediate family
- Any other information requested by your notary

FOOD FOR THOUGHT

- Do you have the most recent medical and psychosocial evaluations of the person considered incapacitated?
- Have you obtained the search certificates from the Register of Mandate Dispositions of the Chambre des notaires and the Barreau du Québec?
- Does this person have a protection mandate? If so, do you have a true copy of it, or the original document if the mandate is not notarized?
- If the protection mandate is not notarized, have you located one of the people who witnessed (in writing) the mandate of the incapacitated person?
- Any other question raised with your notary.

DID YOU KNOW?

