

# THE NOTARIZED PROTECTION MANDATE

What happens if you lose your capacity?

**PROTECT YOURSELF IN ADVANCE!**



The protection mandate is the only document that allows you to safeguard your interests in case of incapacity.

**Protect yourself in advance.**



Consult your

**notary!**



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# WHY PREPARE A PROTECTION MANDATE?

If you were to become incapable of taking care of yourself, your protection mandate would **safeguard your interests and those of your family.**

*A person is considered legally incapacitated when his health renders him incapable of making decisions or acting on his own behalf.*

If you don't have a protection mandate when becoming incapacitated, you will no longer be able to express your will regarding decisions that must be made to protect you. For example:

- + Who will take care of you and how?
- + Who will take care of your children?
- + Will the needs of your spouse and family be provided for?
- + Who will pay your mortgage and bills if no one is authorized to withdraw money from your account?

The protection mandate allows you to **appoint someone or several people to make decisions on your behalf.** It also allows you to determine **their powers and responsibilities** when managing your property. For example:

- + Sell or hypothecate your property.
- + Borrow money on your behalf.
- + Invest your money to grow your patrimony.
- + Use your money and your property to meet the needs of your spouse and children.

The protection mandate also allows you to:

- + Express your will regarding the care you want to receive and the place you want to lodge.
- + Indicate how you want your **property, your money and your debts** to be managed.
- + Name a **tutor for your minor children.**
- + Give instructions to facilitate the administration of your **business.**
- + **Reduce the cost and time** needed to act on your behalf (without a mandate, your family or loved ones will have to take more complicated legal proceedings to appoint someone to represent you).
- + Provide any other relevant guidelines based on your own circumstances.

*The protection mandate is also called a “**mandate in anticipation of incapacity**” or “**a mandate in case of incapacity**”.*

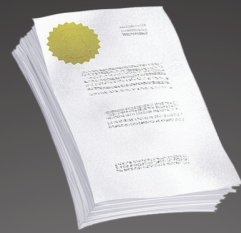
*The protection mandate is the only way to name someone who will act on your behalf in the event you are incapable of doing so. Even a power of attorney becomes invalid if you are declared incapacitated.*

**DID YOU KNOW?**



*All the information you provide to your notary is confidential. In the event you are found incapacitated, he will be able to give copies of your mandate to the people who are entitled to have it according to the law.*

IF ONE DAY  
YOU BECOME  
INCAPACITATED,  
YOUR PROTECTION  
MANDATE WILL  
SAFEGUARD  
YOUR INTERESTS  
AND THOSE OF  
YOUR FAMILY.



## WHAT HAPPENS IF I DON'T HAVE A PROTECTION MANDATE?

If you are declared incapacitated and don't have a protection mandate, the **court** will **name a person to be responsible** for taking care of you and your property. The court will also determine the manner in which this person will make the decisions that affect you.

Furthermore, every decision and measure taken by this person is subject to the supervision and control of the Curateur public and a tutorship council. A **tutorship council** is generally made up of three persons drawn from your circle. They are appointed by the court.

Such administrative and judicial proceedings may require **much more time** and **much higher costs** than to have a protection mandate prepared by a notary.

*The same procedures may have to be taken if the mandate is incomplete.*

## WHY A NOTARIZED PROTECTION MANDATE?

If you become incapacitated one day, your notarized protection mandate ensures that your wishes are known and accounted for.

It is a **reliable and secure** document, notably because:

- + A notarized mandate is **harder to contest than one that is not**, since your notary has to ensure that it is authentic. He must check your identity and prepare a mandate that conforms to both the law and your wishes. He must also explain its content and certify that you have understood it and signed it freely.
- + A notarized mandate will always be **secure** because the law requires your notary to keep the original in a safe place. You can be fully certain that it will not be lost, changed or destroyed. Your notary will provide you with a certified true copy of the original.

- + Any person who wants to protect you may readily check whether you had a notarized mandate by submitting a search request to the Register of Mandate Dispositions of the Chambre des notaires. Every notary must transmit to the Registrar certain data relating to the mandates held in their records. The purpose of the register is to maintain a list of all notarized mandates in Québec and it therefore contains no copies of the mandates as such.

Your notary will inform you of the various clauses you may include in your mandate and will **advise you according to your particular circumstances**.

He will also answer your questions, **explain the consequences of your choices** and clearly express your wishes in writing.

If your protection mandate is not notarized:

- + It may **not be valid** in Québec.
- + It may **contain clauses that are illegible, incomprehensible or incompatible** with the law.
- + It may be **incomplete**.
- + It may be **lost, changed or destroyed**.
- + It will have to be verified and validated by the court. This requirement also applies to notarized protection mandates, but the procedure can be more complicated for a mandate that is not notarized because the original has to be found and a witness to the signing has to be convoked.

## HOW TO PREPARE?

### INFORMATION TO COLLECT

- Your date of birth and social insurance number
- Documents regarding your civil status (*marriage certificate, marriage contract, judgment of divorce, etc.*)
- A patrimonial balance sheet (*a list of your property, investments and debts*)
- Your business documents (*a shareholders agreement, partnership agreement or association agreement, for example*)
- Any other information requested by your notary

### FOOD FOR THOUGHT

- Whom would you like to see taking decisions on your behalf? Would they accept the responsibility?
- What powers would they have? Would they be accountable for their decisions? If so, to whom and how often?
- Who would replace them if they were no longer able to perform their duties?
- What are your instructions regarding the care you would like to receive? (*For example: not receive artificial life support, remain at home, be placed in a healthcare establishment.*)
- What are your instructions regarding the management of your property and finances? (*For example: how to use your money for your family, whether to sell your home, what level of investment risk to take.*)
- Any other question raised by your notary.