

Questions to Ask When Drafting Your Protection Mandate: A Practical Guide for Effective Protection

Part 1: The Protection Mandate – Its Usefulness

The Protection Mandate, formerly known as the Mandate in Case of Incapacity, is a crucial legal document for planning the future in the event of incapacity. This guide aims to explain what the protection mandate is, why it is important, and how to set it up.

The protection mandate is a legal document that allows a person (the mandatary) to make decisions on your behalf if you become incapable of doing so yourself. These decisions generally concern the management of your assets and the protection of your person, whether for your basic needs (such as food, housing, etc.) or for managing your bank accounts, among other things.

The protection mandate is an important estate planning tool that allows for anticipating and managing potential incapacity. By taking the necessary steps to create a protection mandate, you can ensure that your interests will be protected and your wishes respected, even in the event of incapacity.

Part 2: The Protection Mandate – Its Application

The protection mandate only takes effect when you become incapacitated. Your mandatary must then initiate the mandate homologation process.

The first steps involve obtaining medical and psychosocial evaluations (by a social worker) that will confirm your incapacity.

Your mandatary will then need to schedule an appointment with a notary, who will handle the formalities to request the mandate's homologation before the court.

Part 3: The Protection Mandate – Its Advantages

Drafting a protection mandate is essential for several reasons:

- 1. Advance Planning:** The protection mandate allows you to designate a trusted person in advance to make decisions on your behalf in case of incapacity, enabling early planning for the management of your assets and personal care.
- 2. Choice of Mandatary:** You have the authority to choose the mandatary, the person who will be responsible for making decisions on your behalf. This ensures that your interests will be managed by someone you trust and who understands your preferences and values.
- 3. Preservation of Autonomy:** The protection mandate allows you to maintain a degree of autonomy by personally designating the person who will make decisions on your behalf. This enables you to remain in control of your affairs even in the event of incapacity.

You also have the option to combine a protection mandate **with a general power of attorney**. This allows you to have appropriate representation at all times.

The general power of attorney takes effect upon signing before a notary (and you can, of course, choose its powers and duration), while the mandate applies in the event of your incapacity.

The general power of attorney allows your mandatary to represent you in managing your assets or affairs while you are still capable, such as administering your bank accounts, managing rentals, or even selling a property.

You also have the power to revoke or modify this power of attorney at any time.

Drafting a Protection Mandate with General Power of Attorney?	Partner 1:		Partner 2:	
	Yes	No	Yes	No
Duration of the General Power of Attorney? (Please note that additional fees will apply if drafting a mandate with a power of attorney.)				

Part 4: What Are My Directives?

Organ Donation

As with a will, it is possible to indicate your choice to accept or refuse organ donation. This decision will then be recorded in the electronic organ donation registry of the Chamber of Notaries, making the information more easily accessible to doctors. It is also, of course, possible to remain undecided on the matter.

Partner 1:	Yes, I accept organ donation	
	With donation to science	Without donation to science
	No, I refuse organ donation	
	I choose not to decide	

Partner 2:	Yes, I accept organ donation	
	With donation to science	Without donation to science
	No, I refuse organ donation	
	I choose not to decide	

The Choice of My Mandatary:

You have several options, and everything will be discussed with your notary during the first appointment.

- » A Single Mandatary or Separate Mandatories for Property and Personal Care?

You can appoint a mandatary for personal care who will be responsible for your well-being and health-related decisions. Additionally, you can appoint a mandatary for property who will manage your money and assets.

- » One or More Mandatories? Should They Act Jointly or Individually? Should Decisions Be Made by Majority?

You can choose one or more mandataries. You will then need to specify the rules for decision-making. This will help prevent conflicts if your mandataries disagree.

It is also advisable to choose mandataries who know each other and, if possible, get along well.

Mandatory Choice	Partner 1:	Partner 2:
Mandatory for Personal Care and Property:	Name: Address: Relationship to you:	Name: Address: Relationship to you:
or		
Mandatory for Property:	Name: Address: Relationship to you:	Name: Address: Relationship to you:
Mandatory for Personal Care:	Name: Address: Relationship to you:	Name: Address: Relationship to you:
Choice of Replacement Mandatory:	Name: Address: Relationship to you:	Name: Address: Relationship to you:

The Choice of Verifier:

Since November 1, 2022, it is mandatory in a protection mandate to appoint one or more persons responsible for verifying the mandatory (the rendering of accounts). This person or persons will check the supporting documents (such as account statements) and ensure that the mandatory is properly fulfilling their responsibilities.

You can appoint your replacement mandatory as a verifier. However, it is advisable to also appoint another person as a verifier in case there is only one mandatory left.

You have the option to set the frequency of verification, not exceeding every 3 years.

If you are unsure whom to choose, the court will handle this during the mandate homologation process and may sometimes appoint the Public Curator.

Verifier Choice	Partner 1:	Partner 2:
Name & Address of Verifier:		
Name & Address of Replacement:		
Frequency of Verification:	Annual (recommended) Every 3 Years Other:	Annual (recommended) Every 3 Years Other:

The Choice of Compensation:

A mandatory is presumed to act free of charge. However, you have the option to arrange compensation for your mandatory and verifier. This compensation will be in addition to the reimbursement of travel expenses, lost wages, and other expenses already covered.

	Partner 1:	Partner 2:
Compensation:	No Compensation	No Compensation
Mandatory:	Amount: \$ Frequency: Indexation:	Amount: \$ Frequency: Indexation:
Mandatory for Property:	Amount: \$ Frequency: Indexation:	Amount: \$ Frequency: Indexation:
Mandatory for Personal Care:	Amount: \$ Frequency: Indexation:	Amount: \$ Frequency: Indexation:
Verifier:	Amount: \$ Frequency: Indexation:	Amount: \$ Frequency: Indexation:

Powers of the Mandatory:

» Do I want to grant full administration to my mandatory? Do I want to limit their powers?

You can also exclude certain powers from your mandate, such as selling a property, lending money to someone, or managing your business.

Your mandatory will manage your assets, financial interests, and ensure your physical and emotional well-being.

For example, they will make sure your needs are met (such as clothing, care, etc.), manage your income, pay your bills, and handle your assets.

	Partner 1:		Partner 2:	
Full Administration:	Yes	No	Yes	No
Limitation of Powers: If limited, specify your restrictions:	Yes	No	Yes	No

» Do I want **my assets to be used for the benefit of my family**? Warning: If no mention is made in your mandate regarding this matter, the mandatory will be obliged to use your assets solely to meet your needs and cannot use them for your family.

	Partner 1:		Partner 2:	
Use for the benefit of my partner:	Yes	No	Yes	No
Use for the benefit of my partner and my children:	Yes	No	Yes	No
Until the end of their studies:	Yes	No	Yes	No
Until a specific age:	Yes	Age:	Yes	Age:
	No		No	

» Do I give **my mandatory the right to be a party to a contract affecting my assets**:

	Partner 1:		Partner 2:	
If my partner is my mandatory:	Yes	No	Yes	No
If my children are my mandataries:	Yes	No	Yes	No

	Partner 1:		Partner 2:	
Am I the owner of a property?	Yes	No	Yes	No
Am I the owner of a business?	Yes	No	Yes	No

Medical & Psychosocial Review

Your mandatory must have you undergo new medical and psychosocial evaluations to confirm your incapacity.

Medical & Psychosocial Review	Partner 1:	Partner 2:
Recommended by law (5 years for psychosocial, 10 years for medical):	Every 5 & 10 Years	Every 5 & 10 Years
Choice of interval:	1 Year Interval 2 Years Interval 3 Years Interval	1 Year Interval 2 Years Interval 3 Years Interval
Your mandatory must inform your verifier of the conclusions:		

Housing

Housing	Partner 1:	Partner 2:
Do I wish to remain in my home as long as possible? with necessary adjustments made by my mandatory)		
Have I already chosen the residence where I wish to live if my home is no longer suitable for my needs?		

Life-Sustaining Treatment

Partner 1:	
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Partner 2:	
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Guardianship of My Children if Both Parents Are Incapacitated or Deceased

Who will be responsible for the guardianship of my children?	Partner 1:	Conjoint 2:
Name		
Address		
Replacement in case of death/refusal:		