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### • Power of Attorney

## Power of Attorney in Making or Changing Beneficiary Designations

A power of attorney is a legal document by which a person is designated (called the attorney) by another person (called the grantor) to do certain things on behalf of the grantor. A question that often arises is whether or not a power of attorney can make or change a beneficiary designation on a life insurance policy owned by the grantor. It is our position that based on the existing law, a power of attorney cannot make or change a beneficiary designation.

Generally, the law allows a power of attorney to do anything the grantor could do, except make a will. The grantor could choose, however, to limit the scope of the POA's authorization in the power of attorney document so that the POA could do less than the law would allow. However, the ability to make a will can never be given by a grantor to a POA. The rationale is that the disposition of a grantor's property is a personal right of the grantor that cannot be given or transferred to another. Generally, the definition of a will extends to any sort of testamentary disposition, meaning any disposition of property that occurs upon death.

A beneficiary designation is a testamentary disposition.

If a power of attorney is entering into a new life insurance policy on behalf of the grantor, where the grantor is the owner, the only beneficiary designation that is possible is the estate of the grantor. Where there is an existing life insurance policy in place, the POA cannot change or modify the existing beneficiary designation made by the grantor. All requests of a POA to make or change a beneficiary designation should be refused.

Individual situations will have to be examined in light of the legislation of the province in question.

For any further information or questions, please feel free to call us at 905 682-5789 or send me an e-mail at [gjonker@capital-wealth.ca](mailto:gjonker@capital-wealth.ca)

