

Capacity

While you have capacity, you can make your own decisions. You can also appoint others to make decisions for you in case you lose capacity. The law presumes you have capacity until a medical professional or the court decides you don't.

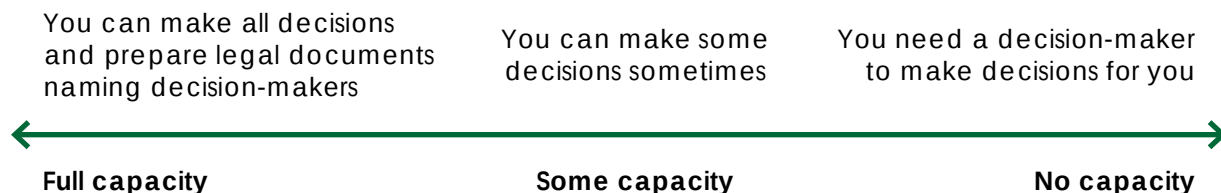
If you lose capacity, **no one** automatically has a legal right to make decisions for you. The only people who can make decisions for you are:

- a decision-maker you named in a valid legal document, **or**
- someone named as your decision-maker in an order granted by the court.

Capacity is the ability to understand and appreciate the nature of your decisions.

When it comes to legal documents, capacity is black or white – either you are capable, or you are not. You must have capacity to make a Personal Directive, Enduring Power of Attorney and Will.

In day-to-day life, capacity is measured on a spectrum. This means there are a range of possibilities, from having full capacity to some capacity to no capacity. You may have capacity to make decisions about some things but not about other things.



Your capacity can change suddenly or over time. You may lose capacity quickly if you are in an accident that leaves you in a coma, in which case you cannot make any decisions for yourself. Or you may lose capacity over time if you are living with dementia.

Your capacity can also change throughout the day or day by day. Maybe you're more alert in the mornings but less alert in the evenings. On some days, you may need some help to make some decisions. Other days, you may not be able to make any decisions.

Personal vs. financial decisions

Capacity matters when it comes to making two types of decisions: personal and financial.

Personal decisions

Any non-financial decisions, including about:

- healthcare
- where and with whom you'll live
- who you'll associate with and your social activities
- your education and training
- where you'll work
- any legal proceedings not about financial issues

Financial decisions

Decisions about buying, selling, managing or protecting property.

Simply put, they're decisions about anything you can own, including your home, money and belongings.

Assessing capacity

Different professionals may assess your capacity for different reasons.

To sign legal documents

A lawyer can decide whether you have capacity to sign legal documents. They may ask questions to make sure you understand what you're signing. They only decide on your capacity at that very moment. Lawyers cannot sign documents saying you have, or have lost, capacity.

To get a co-decision-making order, guardianship order or trusteeship order

A capacity assessor must interview you and complete a [Capacity Assessment Report](#).

The Alberta government certifies capacity assessors. They must follow a standard of conduct and undergo training and continuing education. All doctors and psychologists are capacity assessors. Registered nurses, registered psychiatric and deficiency nurses, occupational therapists and social workers can apply to be capacity assessors.

To activate a Personal Directive

You can name someone in your Personal Directive to decide when you've lost capacity, after they consult with a doctor or psychologist.

If you do not name someone, then a doctor or psychologist, along with another service provider, must assess you and complete a [Declaration of Incapacity](#) form.

To activate an Enduring Power of Attorney

You can decide when your Enduring Power of Attorney comes into effect, such as on a specific date or event.

If your EPA says it comes into effect when you lose capacity, you can name someone to decide when you've lost capacity. If you do not name someone, then two doctors must assess you and put in writing that you've lost capacity.

Visit CPLEA's website to learn more!

Find more information about capacity, estate planning, guardianship and trusteeship orders and much more. Get started at cplea.ca/planning-for-future-care/