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POWER OF ATTORNEY NOT COVERED IN WILLS

Where there's a Will, there's a way to make your wishes known and followed upon your death. But what if you don't die? What if you had a stroke or some other tragic circumstance such as Alzheimer's or Dementia? What then - who acts for you? What if an illness or accident leaves you disabled and incapacitated and unable to manage your legal or financial affairs?

Most people think that power is contained in their Will. They think they have a "Power of Attorney", a legal document that allows you to appoint your spouse or a trusted family member or friend to manage their legal and financial affairs. They think that it is included in their Will – it isn't. A Will only comes into effect when someone dies and it does not allow your executor to act for you while you are alive – only after you have died.

Fairly recently, a man came into my office and said "*I have a problem. My wife had a stroke and lost her mental capacity and I am trying to sell my home which is registered in both of our names as Joint Tenants and "they" are telling me I can't sell it!*" "They" are right!

Since this man didn't have a Power of Attorney appointing him as Attorney over his wife's legal and financial affairs, her interest in the home would fall under the administration of the Public Trustee. This man's only option was to apply to the Court to be appointed as his wife's

Power of Committee – a process that costs several thousand dollars and is usually quite a lengthy process, at times, taking 3 to 4 months. This man felt

he had the right to act for his wife and that power or right was contained in her Will. He was mistaken. If the couple had appointed each other as their Power of Attorney, they could have avoided their costly and very frustrating problem.

Now a Power of Attorney is a very powerful document and therefore care has to be exercised as to whom one should appoint. A husband to a wife, and vice versa, who has been married for a long time, and who love and trust one another, is a given. Some people appoint one or more of their children as an alternate. The need to arrange for a Power of Attorney increases with age and many care facilities still require a Power of Attorney be in place before they will accept a relative's directions. Remember, a Power of Attorney continues through your lifetime and ceases on your death – then your Will takes effect.

Gregory J. Litwin is a Notary Public who operates an estate consulting business at 250-770-8888.