

Northwest Territories

TEST FOR COMPETENCY FOR A POWER OF ATTORNEY

Section 13(3) of the Powers of Attorney Act sets out the capabilities required for a person wishing to make a power of attorney. It should be clear that a person fulfils the requirements below. If it is not clear, a professional assessment by a medical doctor or psychologist should be obtained.

A springing or enduring power of attorney may not be validly given by a donor if, at the time the power of attorney is executed, the donor is mentally incapable of understanding the nature and effect of the document in general or any of the following related matters in particular:

- (a) the nature of the donor's property that will be subject to the power of attorney and its approximate value;
- (b) the donor's obligations to his or her dependants;
- (c) that the attorney will, under the power of attorney and subject to its provisions, be able to do on the donor's behalf anything in respect of the donor's property that the donor could do if mentally capable, except make a will;
- (d) that the attorney must account for his or her dealings with the donor's property;
- (e) that the power of attorney may be subsequently revoked by the donor, if he or she is mentally capable of doing so;
- (f) that the donor's property that will be subject to the power of attorney may decline in value unless the property is prudently managed by the attorney;
- (g) that the attorney may possibly misuse the authority given to him or her under the power of attorney.