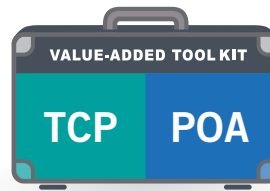


# TCP and POA

## Complementary Client Tools



### Trusted Contact Person

### Power of Attorney

#### Role & Responsibility/Ultimate Authority

- Informal document: Client *identifies and consents to the release of information* to a trusted contact person (**TCP**) whom the FA/FI can contact if there are concerns about client behaviour or transactions in client's account – without violating client privacy
- **TCP** has *NO authority to make* financial decisions for the client
- A **TCP** is helpful if an FA/FI can't find client or is concerned about loss of mental capacity, fraud or financial abuse
- **TCP** is a complement to and NOT a substitute for a POA<sup>1</sup>
- Example: FA/FI might contact a **TCP** to help confirm a client is mentally incapable and then accept instructions from the client's Attorney for Property

- Legal document: Enduring or Continuing Power of Attorney for Property (**POA**)
- Client grants one or more persons authority to make decisions regarding client's property
- **POA** remains valid when client loses mental capacity to manage property
- Each province and territory has its own laws specifying how to make a valid **POA**
- Making a **POA** *does not* always mean the client has relinquished control over financial affairs; it depends on circumstances, the law and **POA** wording

#### NOTES:

- *POA and TCP functions complement one another*
- *TCP can assist FA/FI to resolve worrisome client situations; POA has authority to make property decisions if client loses mental capacity<sup>2</sup>*
- *Some clients may appoint the same person as TCP and Attorney for Property: this can be a problem if an FA/FI has concerns the Attorney is acting inappropriately*
- *FA should advise clients of potential conflicts if the same person is appointed to both TCP and POA roles*

#### Authority Source & Eligibility for Role

- Can be set up with client via internal forms
- FAs should *never* accept appointment as **TCP**
- Client decides on **TCP** – could be family member or trusted friend, who is well-positioned to help
- **TCP** does not have to be a lawyer
- Client may designate more than one **TCP** – a good idea especially if elderly spouses or partners are one another's primary **TCPs**

- Each province and territory has its own law and procedures for making a valid **POA**<sup>3</sup>
- FAs should *never* accept an appointment as a client's Attorney
- Clients can appoint any adult as an Attorney – the appointee does not have to be a lawyer
- Clients may appoint one or more Attorneys

#### NOTES:

- *POAs are formal legal documents subject to provincial/territorial law*
- *TCPs are appointed informally but recommended or required by investment compliance bodies*

#### Who It Protects

- Client: by allowing FA/FI to contact someone *chosen by the client* if there are concerns that client might need help
- FA/FI: by ensuring either can legally release confidential info and intervene to prevent difficult situations from escalating

- Client: by appointing a person to make decisions regarding property if the client loses mental capacity
- FA/FI: by ensuring someone with legal authority can give instructions if the client loses mental capacity

#### NOTE:

- *Primary goal is to enable FA/FI to better serve older or vulnerable clients without exposure to regulatory complaints or undue risk of liability or costs<sup>4</sup>*

<sup>1</sup> OSC Staff Notice 11-779 Seniors Strategy, March 20, 2018, p. 44.

<sup>2</sup> IIROC Notice 16-0114, May 31, 2016, Guidance on compliance and supervisory issues when dealing with senior clients, p. 4, clearly differentiates between the need to have a power of attorney, provision (d), and a trusted contact person (e).

<sup>3</sup> The standards for a valid POA are determined by each province and territory.

<sup>4</sup> OSC Staff Notice 11-779 Seniors Strategy, March 20, 2018, p. 26: FINRA recognized a benefit to firms as well as clients.

## Extent of Authority

- **TCP** may assist FA/FI to resolve any existing concerns about a client's mental capacity, potential fraud, other abuse or wants to help the client obtain assistance (e.g., medical attention)
- Attorney has authority to provide FA/FI with instructions if client loses mental capacity or no longer wants to make decisions
- Attorney is subject to provincial/territorial law and restrictions or instructions in **POA** document

### NOTE:

— *POA abuse has raised concern among regulators*

## Activation “Trigger”/Intervention May Be Initiated by...

- FI/FA may contact **TCP** in response to general concerns (e.g., behaviour changes, indication of elder abuse, questionable financial decisions and/or transactions)
- Client's mental incapacity to manage property – *not* suspicious account behaviour
- FA/FI should generally address issues with client first, but may initiate contact with **TCP** without client approval if needed
- Client's decision to cease making own decisions

### NOTES:

— *Often must establish mental incapacity before an Attorney may act*  
— *FA/FI may initiate contact with TCP on reasonable concern (i.e., to confirm that a problem exists)*

## Change/End of Authority

- Mentally capable client may: terminate an existing **TCP** (withdraw consent to info disclosure); appoint a new **TCP** replacing an existing one
- Power of Attorney typically ends when the client dies or makes a new **POA**
- **TCP** loses all authority when client dies
- On client's death **POA** ends: Attorney loses authority

### NOTES:

— *POA termination is governed by provincial/territorial statutes*  
— *TCP termination is governed by general principle: mentally capable people may make their own decisions and change their minds unless legally obligated not to*

## U.S. Protocol & Precedence (FINRA)

- Effective Feb. 5, 2018, firms are required to designate a **TCP** for clients' accounts and can place a temporary hold on client accounts when they suspect possible financial exploitation<sup>5</sup>
- **POA** information not required to understand TCP duties and responsibilities

### NOTE:

— *SEC approval of this measure occurred in February 2017 but it came into effect a year later<sup>6</sup>*

<sup>5</sup> New FINRA rules protect seniors and vulnerable adults from financial exploitation: Uniform standards to protect U.S. investors take effect. *Investment Executive*, James Langton, Feb. 5, 2018.

<sup>6</sup> FAIR: Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity.



Bridgehouse Asset Managers | [www.bridgehousecanada.com](http://www.bridgehousecanada.com)  
33 Yonge Street | Suite 300 | Toronto | ON | M5E 1G4 | 416.306.5700 | 888.861.9998

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