



# NOVA SCOTIA'S NEW POWERS OF ATTORNEY ACT

LIANS/NSBS Solo and Small Firm Virtual Conference

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# PRESENTERS



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# INTRODUCTION



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- Report of Law Reform Commission: August 2015
- Bill No. 131
  - 1st reading: April 5<sup>th</sup>, 2022
  - 2nd reading: April 7<sup>th</sup>
  - 3rd reading: April 22<sup>nd</sup>
  - Royal Assent: April 22<sup>nd</sup>
  - Proclaimed: July 5<sup>th</sup>

# KEY PRACTICE POINT:

AMENDMENTS TO  
EXECUTION REQUIREMENTS,  
2 WITNESSES REQUIRED





# Amendment

## Highlights

1

### Springing Powers

Codification of former common law presumption that springing powers were acceptable – comes into effect upon the donor losing capacity

2

### No Gifting

Attorneys may not effect gifts on behalf of the donor without express, written permission or direction from the donor (and only if it does not compromise the estate)

3

### Capacity Assessments

Requires a more stringent analysis of capacity, akin to an assessment of testamentary capacity. Attorneys must attempt to consult donors even once they are considered incapacitated

4

### Interested Persons

Defines an “interested person” and brings common law spouses into the mix – any may bring forward issues against the attorney

# Amendment

## Highlights

5

### Accounts and the Monitor

Attorneys must preserve and keep diligent records (subject to forthcoming regulations), and donors may appoint a monitor to oversee the attorney and communicate with the donor

6

### Presumptions of Joint Acting, Majority Rules

Multiple attorneys are now presumed to act jointly and subject to majority rules, unless otherwise provided in the power of attorney

7

### Notice

Donor required to give notice of revocation or variation to previously-appointed attorney; attorney required to give notice of acting

8

### Substantial Compliance

Court may confirm and validate an otherwise invalid power of attorney (think: wills). Extra-provincial powers that conform to the laws of the place it was made now statutorily recognized as valid.

# WHAT ABOUT EXISTING POWERS OF ATTORNEY?

- 19 (1) A power of attorney given before the coming into force of this Section ... continues in force as if given on or after that day and the provisions of this Act apply to it.



# EXISTING POWERS OF ATTORNEY, CONT'D

- 19 (2) Powers of attorney given before the coming into force of this Section are exempt from
  - (a) the requirement in subclause 3(1)(b)(ii) (dating)
  - (b) the requirements in clause 3(1)(d) (2 witnesses)
  - (c) the application of clauses 9(1)(b) to (e) (disqualification of attorney)
  - (d) the application of clause 14(3)(a) (majority rule)

# CONSULTATION

- Further amendments to the Act coming
- Two focus groups: Oct. 27 & 28
  - Remote execution
  - Compensation
  - Prudent investor standard
  - Irrevocability
  - Waivers
  - Monitoring & accounting
  - Varying/terminating POAs
  - Abuse/enforcement
  - Beneficiary designations

# CONSULTATION, CONT'D

- Two goals behind amendments:
  - Increase access to justice by making it easier to prepare your own power of attorney
  - Increase accountability and strengthen protections against abuse of the power of attorney





**KEEP  
CALM  
AND  
ASK  
QUESTIONS**