



Mtre Lauren Tatner's legal services include:

- Residential Real Estate
- Wills
- Estate Settlement
- Powers of Attorney
- Mandates Given in Anticipation of Incapacity
- Homologation of Mandates
- Marriage Contracts
- Marriage Officiant

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## Q & A WITH Mtre LAUREN TATNER (NOTARY)

### The Importance of Wills; Powers of Attorney; Mandates Given in Anticipation of Incapacity

*\*Mtre Lauren Tatner, Notary, LL.B., D.E.S.S. Common Law, D.D.N., LL.M.*

#### 1) WILLS

##### **Q: What is a Will?**

**A:** A will is a document that allows YOU to decide to whom your property is distributed **AFTER your death**. If you die without a will, the law decides who inherits your property.

##### **Q: What types of wills exist in Quebec?**

**A:** The law in Quebec recognizes 3 types of wills:

- Holograph will: handwritten and signed by you;
- Will signed before 2 witnesses;
- Notarial will: made before a Quebec Notary; the most advantageous type of will.

##### **Q: What are the advantages of a Notarial Will?**

**A:** The advantages of having your will drawn up before a Quebec Notary include:

- Estate planning advice to minimize your taxes and to protect your assets;
- Quicker estate settlement that saves your loved ones time and money:  
Any other type of will must be validated (probated) by a court or a Notary after your death, which means additional time and legal fees. Only a notarial will comes into effect immediately when you die.
- Complete, clear, and well-written recording of your wishes:  
A Notary is an attorney who specializes in various areas of law, among which is the drawing up of legal documents in matters of wills and estates. (Continued...)



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(Continued from page 1) Therefore a Notary understands how crucial it is to draft your will in accordance with both Quebec law and your wishes. A Notary will help you consider everything that has to be included in a will as well as foresee all possible situations. Also, since your will is prepared by a Notary and considered an "authentic act", it is almost impossible to contest after your death.

- Better protection for loved ones:

A Notary is a legal advisor who may recommend that you include special clauses in your will in order to protect the people to whom you're leaving property.

- Your will can never be lost, altered, or destroyed:

A Notary must keep the original in a safe fire-proof place and must register it with the Chamber of Notaries, making it trouble-free for the person in charge of settling your estate to locate your last will immediately after you pass away.

## 2) POWERS OF ATTORNEY

### Q: What is a General Power of Attorney?

A: A general Power of Attorney is a document that allows YOU (mandator) to choose a trusted family member or friend (mandatary) to manage your property on your behalf while you are alive and mentally competent. With this delegation of power, you will ensure that you have adequate representation when you're unavailable to handle things yourself.

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#### 3) MANDATE GIVEN IN ANTICIPATION OF INCAPACITY

**Q: What is a Mandate Given in Anticipation of Incapacity?**

**A:** A Mandate Given in Anticipation of Incapacity is a document that allows YOU (mandator) to choose a trusted family member or friend (mandatary) to manage your property AND take care of your well-being should you ever be declared mentally incompetent.

**Q: If I do not have a Mandate, would my spouse and/or children have the power to automatically take care of me?**

**A:** No. Without a Mandate in Quebec, you do not have the authority to determine who will be appointed to represent you or the type/degree of protective supervision that is exercised over you- this is determined by the law and the court.

However, if you create a Mandate while you are alive and well, YOU have the freedom to choose the person who will look after your property and your person, and the powers he/she will have.

**Q: What are the advantages of having a Mandate prepared by a Notary?**

**A:** Just like a will, it is prudent to have a Notary draw up your Mandate, as opposed to drafting it yourself, for the following reasons:

- It will save you and your loved ones money, time, and energy:  
Having a mandate saves your loved ones the stress of instituting protective supervision -- a lengthy, expensive, and tiring process.
- Guarantees that your wishes are recorded accurately in writing and in accordance with Quebec law:

A Notary will give you proper legal advice to ensure that the care you would wish to receive is written in clear and precise wording and in accordance with Quebec law, (Continued page 4)



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(Continued from page 3) making it difficult to contest. If it is not a notarial mandate, it risks being incomplete or unclear and it could be considered invalid, putting you in the same situation as someone who is declared mentally incompetent without a mandate.

- Ensures that you will be protected by a person you trust:  
A mandate gives you the opportunity to choose the person you would trust most to handle your affairs and the assurance that you are properly being cared for. A Notary will make certain that your mandate is adapted to your particular situation.
- It can never be lost, altered, or destroyed:  
A Notary must keep the original mandate in a safe fire-proof place and must register it with the Chamber of Notaries, making it easy for the person you name as mandatary to locate your last mandate and respect your wishes in the event that you have been declared mentally incompetent.
- Provides better security since a notarial mandate is difficult to dispute.

#### **Q: Does the Mandate automatically take effect just because my family/friends think I am no longer mentally competent?**

**A:** No. There is a procedure (homologation) that must be followed before your mandate can come into effect. The homologation of the Mandate can take place before a Notary. The process involves:

- Consultation with a Notary by your mandatary;
- Notary-conducted Last Mandate Search;
- Obtainment of medical and psychosocial reports;
- Court file to be opened by a Notary;
- Obtainment by a Notary of a court judgment that legally authorizes your mandatary to represent you.



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**Q: If I already have a Will and Mandate Given in Anticipation of Incapacity, do I ever have to think about these documents or consult a Notary again?**

**A:** Yes. It is wise to review these documents when circumstances in your life change (e.g. death in the family, spouse becoming ill). Never hesitate to consult your Notary for advice as changes in your life and in the law may require these documents to be updated. By consulting a Notary to draw up or review your Will and Mandate, you are taking an important step towards properly managing your life AND performing an act of love towards your family members.

Lauren Tatner is a notary practicing in Montreal with Notary Ruta Pocauskas. With over 30 years of cumulative experience, their areas of focus are residential real estate (sales, loans), wills, powers of attorney, mandates given in anticipation of incapacity, homologation of mandates, estate settlement, marriage officiations, and marriage contracts.

Mtre. Tatner graduated from the Université de Montréal where she obtained her Bachelor of Laws, her Graduate degree in Common Law, her Diploma in Notarial Law, and her Master of Laws. She is a member of the professional order of Quebec notaries (Chambre des notaires du Québec).

For more information contact Notary Lauren Tatner at 514-931-7174 or [Lauren.tatner@notarius.net](mailto:Lauren.tatner@notarius.net)

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