

A Fact Sheet to help
**Substitute Decision Makers for Property when dealing with
Financial Institutions**

What is a substitute decision maker for property?

A substitute decision maker is a person appointed to make decisions for an adult living with an intellectual disability under *The Adults Living with an Intellectual Disability Act*. An adult living with an intellectual disability is an adult who lives with an intellectual disability and is not capable of managing his or her own property.

The act allows the Commissioner for Adults Living with an intellectual disability to appoint a legal substitute decision maker to manage an adult living with an intellectual disability's property and make decisions about it. The substitute decision maker must, by law, use the decision making authority responsibly, honestly and in good faith for the benefit of the adult living with an intellectual disability and to meet the adult living with an intellectual disability's financial obligations.

What power does a substitute decision maker have?

The Commissioner for Adults Living with an Intellectual Disability defines the limits of the power that is given to the decision maker. Within these limits, the decision maker has the right to take possession of and control the real and personal property owned by an adult living with an intellectual disability and to manage that property responsibly. Similar to a Power of Attorney or Committeeship a substitute decision maker 'stands in the shoes' of the adult living with an intellectual disability to manage that person's assets as if that person was capable of managing those assets independently.

Substitute decision makers may do whatever is needed to act on the power granted to them.

Example 1:

The decision maker has the power to receive and invest money for the adult living with an intellectual disability and can open and operate a bank account to do this.

Example 2:

The decision maker has the power to file tax returns for the adult living with an intellectual disability and can arrange for a tax preparation service to do it.

How do I know if a substitute decision maker has been legally appointed to manage property for an adult living with an intellectual disability?

An Appointment Document is issued by the Commissioner and the original is given to the substitute decision maker. This is a legal document that states the substitute decision maker has been appointed and has the power to make decisions on behalf of the adult living with an intellectual disability.

What is the scope of a substitute decision maker's appointment?

The scope of a substitute decision maker's power is outlined in the Appointment Document and includes:

- the name of the adult living with an intellectual disability,
- the name of the substitute decision maker (or decision makers) who is appointed,
- the length of time the appointment is for,
- the specific powers granted,
- the specific terms and conditions that apply to the powers of the person appointed.

A substitute decision maker can only be appointed for a maximum of five years, but the appointment could be renewed if needed and a Renewal Appointment Document would be issued.

What power does a substitute decision maker need to set up and operate a bank account on behalf of an adult living with an intellectual disability?

The property powers:

- 92(2)(f) *to receive, deposit and invest money*
- 92(2)(g) *to draw, accept and endorse bills of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities, and assign choses in action*

and
are the powers needed to set up and operate a bank account on behalf of an adult living with an intellectual disability.

With these powers, the substitute decision maker can decide how the bank account will be operated including who will have signing authority, how the funds will be invested, etc.

How should accounts for the adult living with an intellectual disability be set up?

Accounts holding assets that belong to the adult living with an intellectual disability should be held in the adult living with an intellectual disability's name.

Accounts should not be set up as joint with another person or in another person's name 'in trust for' the adult living with an intellectual disability because this in effect changes the legal ownership of the assets in the account.

What other powers can a substitute decision maker for property have?

Depending on the circumstances a substitute decision maker could have the authority to make decisions about real estate, loans, settling debts, contracts, mortgages, etc. These powers are specified in the appointment document.

How do I find out if an adult living with an intellectual disability has a substitute decision maker?

The appointments of all substitute decision makers are registered at the Office of the Commissioner for Adults Living with an Intellectual Disability. For information about an appointment or about substitute decision making, contact:

Office of the Commissioner for Adults Living with an Intellectual Disability

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