

MY PROTECTION **MANDATE** BOOKLET AND FORM


Production by the

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GLOSSARY

As a private writing

Said of a legal document that is signed by the parties involved, without being subject to any other formality.

Commissioner for oaths

Person authorized by the Minister of Justice to administer oaths in Québec.

Curatorship

Protective supervision for persons whose inability to take care of themselves or their property has been recognized as being total and permanent.

Full administration

Power to administer, protect and safeguard property and make it productive, to increase the patrimony, and to sell or mortgage property.

Homologation

Judicial procedure to recognize that a person is incapable, that the protection mandate is valid and that the mandatary can begin to exercise his or her duties.

Incapable

Describes persons who are unable to care for themselves or administer their property.

Inventory

List of property (money, investments, moveables, immoveables, etc.) belonging to the mandator at the time the mandate takes effect.

Legal person

Entity recognized as having legal rights and obligations under conditions provided for by law, such as a trust company.

Mandatary to property

Person (physical or legal) appointed by the mandator, who will be responsible for managing the mandator's property in accordance with the provisions of the protection mandate.

Mandatary to the person

Person appointed by the mandator, who will be responsible for ensuring the well-being of the mandator in accordance with the provisions of the protection mandate.

Mandator

Adult in possession of all of his or her faculties who prepares a protection mandate.

Medical and psychosocial assessments

Assessments performed by professionals from the health and social services network or in private practice to determine a person's degree of incapacity.

Protection mandate

Official document in which an adult of sound mind designates one or more people to look after his or her person and property should he or she become incapacitated. The mandate specifies the scope of the powers given to the designated person or persons.

Protective supervision

Legal measure designed to ensure the protection of an incapacitated person and his or her property.

Rendering of account

Periodic report submitted by the mandatary to persons named by the mandator. This report provides an account of actions taken to protect the mandator and administer his or her property.

Simple administration

Power limited to properly managing, safeguarding and preserving property.

Statement under oath

Written statement made under oath before a commissioner for oaths, or any other person authorized for this purpose by law.

Substitute mandatary

Person who may be asked to replace the principal mandatary in case he or she is no longer able or willing to assume the responsibilities described in the mandate.

Tutorship

Protective supervision for persons who are only partially or temporarily unable to care for themselves or their property.

Witness

Person who is neither the principal mandatary, the substitute mandatary nor the person who receives the rendering of account, and who attests to the mandator's capacity when the mandate was signed.

DID YOU KNOW?

Have you ever wondered who would take care of you if you couldn't do so yourself? For example, who would manage your affairs? The state of being unable to look after yourself and your property is called "incapacity." The main causes of incapacity are intellectual disability, mental and degenerative illness, and traumatic head injury.

The protection mandate, which used to be called "a mandate in case of incapacity," is designed to deal with this kind of situation. It lets you name, in advance, one or more people to look after your well-being and manage your property if you become unable to do so yourself. You can also specify what you want their responsibilities to be.

The law provides for two types of protection mandate: a notarized mandate, meaning one prepared by a notary, and a mandate given in the presence of witnesses, also known as a private writing. A mandate given in the presence of witnesses can be drafted by a lawyer, or you can prepare it yourself using the form provided by the Curateur public du Québec. Whatever type of mandate you choose, it must be approved by the court. This process is called "homologation."

This booklet will provide you with the information you need to prepare your own protection mandate. To find out more about the role of the Curateur public du Québec in protecting incapacitated persons, visit our website at www.curateur.gouv.qc.ca.

This document always refers to the mandatory in the singular, but you may name more than one mandatory in your mandate.

Protection mandate

The *Civil Code of Québec* allows any adult of sound mind to prepare a protection mandate. In it, you can describe how you want to be looked after and how you want your property to be managed if someday you are unable to do so yourself.

It is up to you to decide what to include in your mandate. The mandate must reflect your wishes and be adapted to your specific situation so that you will be well protected should you become incapacitated.

You should review your mandate periodically to make sure that it still meets your needs. Important events in your life (for example, birth, divorce, purchase of a property, death of a loved one) are good opportunities to take another look at it. If you change the mandate, however, the whole process has to be repeated as if you were giving a mandate for the first time. Remember that the new mandate revokes all prior mandates.

1

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Choosing a mandatory

As the mandator, you are free to appoint anyone you wish to be your mandatory. The mandatory is the person who will see to your protection and manage your property should you become unable to do so yourself.

The mandatory responsible for the protection of your person will see to your general well-being. This means that he or she will make sure that your living conditions (housing, food, clothing, care, leisure activities, safety, etc.) are satisfactory.

The mandatory responsible for administering your property will manage your bank accounts, investments and immovable property, pay your bills, prepare your tax returns, and so on. The clauses that you include in your mandate will determine the responsibilities, powers and obligations of the mandatory to property.

The mandatory must be an adult who is capable of carrying out the assigned tasks. Choose someone in whom you have full confidence and discuss these responsibilities with him or her. Obtain your mandatory's agreement to ensure that the mandate will be homologated, that your needs have been understood and that your wishes will be respected when the time comes. Note that the Curateur public cannot be appointed as mandatory.

In all cases, it is advisable to name a substitute mandatory (a replacement) in case your principal mandatory is unable to carry out his or her responsibilities when the mandate takes effect, or at any other time afterwards. If there is no substitute mandatory, the process to institute protective supervision (tutorship or curatorship) will commence.

Should you appoint one or more mandataries? It's up to you. You can name only one mandatory who will take care of you AND your property. If you prefer, you can name two different mandataries, one to protect your person and another to manage your property.

The mandatory to the person must be a physical person, such as a family member or friend. The role of this mandatory is to ensure your well-being.

The mandatory to property can be either a physical person or a legal person. For example, a legal person is a trust company or a savings society. The role of this mandatory is to administer your property.

You may also name more than one mandatory to the person and more than one mandatory to property. These are known as co-mandataries, and they are required to act jointly, meaning that they will have to agree on every decision that concerns you.

If one of the co-mandataries dies or resigns, the remaining mandatory can act alone only if this is stated in the mandate. Otherwise the substitute mandatory, if any, will be named as mandatory. If you have not named a substitute mandatory, the process to institute protective supervision will commence, because the remaining co-mandatory may not make decisions alone.

Once you have drawn up your mandate, it is prudent to give a copy to your mandatory or, at the very least, tell him or her where you have stored the original. You should also inform your family that you have prepared a mandate, and tell them the mandatory's name. This will simplify the homologation process.

Upon homologation of the mandate, your mandatory can always refuse to take on the assigned responsibilities if he or she is no longer willing or able to exercise the duties specified in the mandate. The same applies to the substitute mandatory, who has the right to refuse the appointment if asked to replace the principal mandatory.

In exercising his or her duties and making any decision regarding the homologation or execution of the mandate, your mandatory must act in your best interest, respect your rights and safeguard your autonomy. Your mandatory must inform and consult with you as much as possible and without delay.

Incapable persons are full-fledged citizens and their autonomy must be preserved as much as possible. The ability to perform certain actions alone varies depending on the person, but they may be able to, for example, drive their vehicle, have a bank card, make certain purchases, register for a course, etc.

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Witnesses

You must sign the document in the presence of two witnesses, and both witnesses must countersign the document in your presence. In so doing, they attest that the mandate has indeed been signed by you and that you were capable of doing so. Although you have to tell the witnesses what the document is, you do not have to disclose its exact content or identify the mandatary. Your witnesses must initial each page. This indicates that each page is part of the mandate and that it has not been replaced since the mandate was signed. The witnesses must then sign the mandate.

A witness cannot be a mandatary, a substitute mandatary or the person to whom the mandatary will submit the rendering of account. Witnesses must be adults of sound mind.

It is recommended that one of your witnesses give a statement under oath. The statement under oath is a written document in which the witness attests that the mandator is capable to prepare his mandate, and that the mandator signed the mandate in the presence of the witnesses. This document will be required at the time of homologation. Without a statement under oath, which is proof of your capacity at the time you prepared your mandate, the mandate could not be homologated.

A statement under oath can be made before a notary, a lawyer or a commissioner for oaths authorized by the Minister of Justice to administer oaths in Québec. The costs are minimal. You can search for a commissioner for oaths in the Register of Commissioners for Oaths of the Ministère de la Justice (www.assermentation.justice.gouv.qc.ca).



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Protection of the person

The protection mandate allows you to make your wishes known regarding any matter that affects your person and well-being (housing, food, clothing, etc.). For example, you can inform your mandatary about your preferences regarding the type of place where you would like to live. You can also indicate your end-of-life wishes, for instance, with regard to the type of care you want or do not want to receive in your final days, pain relief, aggressive therapy, organ donation, and so on. Note that advance medical directives (AMD) take priority over the end-of-life wishes expressed in your mandate. You can find out more about AMDs by visiting the Québec government's Portail santé mieux-être at sante.gouv.qc.ca.

DID YOU KNOW?

5

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12

Administration of property

It is important to clearly define the powers you give to the mandatary to property. You may give your mandatary the powers of simple administration. In this case, your mandatary will manage your day-to-day affairs, such as pay bills or collect your income. Your mandatary will preserve and maintain your property, make investments that are presumed sound, for example, by using different types of bonds, certificates of deposit, and so on. However, he or she must obtain the authorization of the court for more significant transactions such as selling property.

You may also decide to give your mandatary more responsibility, or the powers of full administration. In addition to the powers of simple administration, your mandatary must ensure that your assets grow and increase in value by making all kinds of investments. As well, he or she may also borrow, take out a mortgage in your name, or sell your property without prior authorization. Remember, however, that

regardless of the powers you give your mandatary, you can prohibit the selling of certain property.

If you do not specify this in your mandate, the powers of simple administration will apply.

If you have one or more dependants when the mandate is homologated or during its term, your obligation to provide support will continue despite your incapacity. Your mandatary must ensure their support and maintenance by taking into account the needs, resources and circumstances of all parties and, if applicable, the time it will take your dependants to become autonomous adults.

6

Rendering of account

It is advisable to provide for a rendering of account during the mandate. The rendering of account is drawn up periodically by your mandatary regarding the management of your property (income, expenses, banking transactions, etc.) and actions taken to ensure your welfare (choice of housing, medical care, etc.). If you decide to include such a provision, you must name one or more people to whom your mandatary will submit a report, and specify how often this is to be done. The Curateur public cannot be appointed to receive the rendering of account.

It is also recommended that your mandatary make an inventory of all your moveable and immovable

property upon homologation of the mandate. If you opt for an inventory, it must be made before a notary or in the presence of two witnesses.



7 Remuneration

The Civil Code of Québec stipulates that the execution of the mandate is done free of charge, unless you want to offer remuneration to your mandatary for the time spent taking care of you or managing your property. However, your mandatary is entitled to be reimbursed for any costs incurred in exercising his or her duties, such as travel expenses. You do not have to specify this in your mandate.

Your mandatary has the right to be reimbursed for expenses incurred in carrying out his role, for example, an accountant's fees for filing your tax return or a lawyer's fees for defending you during a dispute. Although not mentioned in the law, certain expenses, provided they are reasonable and, above all, incurred in your best interest, may be reimbursed to the mandatary. For example, gas and parking expenses could be considered reimbursable, but not the purchase of a vehicle by your mandatary to visit you.

8 Partial incapacity

If, according to the medical and psychosocial assessments, you are only partially incapacitated, it means that you are able to make certain decisions regarding your person or property. Your incapacity is partial if, for example, you are able to take care of yourself, but are unable to do banking transactions or pay bills. If you are only partially incapacitated, you can indicate in your mandate whether or not you want it to be homologated with all the powers specified in it. All the factors that led to the decision that you are only partially incapacitated will be taken into account by the court when the mandate is homologated. The court will decide according to your best interest, and the safeguarding of your rights and autonomy.

If your incapacity is only partial, you can indicate in your mandate whether or not you want it to be homologated with all the powers specified in it.

9 Reassessment

When it comes to the protection mandate, the law does not require a systematic reassessment of your incapacity, as is the case for tutorship (every three years) or curatorship (every five years). However, you or your mandatary may request such a reassessment whenever you wish. You can also indicate in your mandate how often you want your mandatary to request a reassessment of your condition. If a reassessment is requested, new medical and psychosocial assessments will have to be obtained.

DID YOU KNOW?

11 Choosing a tutor to a minor

If, at the time of the homologation of your mandate, one of your children is a minor, a tutor should be appointed. The protection mandate allows you to designate a person for this role. The appointment of a tutor will only take effect if you are the last parent (as father or mother) to assume the duties of legal tutorship for the child.

You can choose the same tutor for all your minor children or name several different tutors by indicating which tutor will be responsible for each child.

You can choose the same tutor for all your minor children or name several different tutors by indicating which tutor will be responsible for each child.

When does the mandate take effect?

For the mandate to be homologated, and therefore take effect, the court must confirm that you are indeed incapacitated. To be able to do this, a judge or clerk must have on hand medical and psychosocial assessments carried out by professionals from the health and social services network, who have established that you are incapacitated. The court must also verify the validity of the mandate as well as the mandatory's ability to exercise his or her duties.

Your mandatory then submits an application for homologation to the court of the legal district where you reside. The application must be accompanied by copies of the mandate and the medical and psychosocial assessments.

This procedure takes time. The procedure ends with a court judgment bringing the mandate into effect. This allows your mandatory to exercise the powers granted by the mandate.

Your mandatory may ask a lawyer or notary for help in carrying out these steps, which can be complex. Homologation fees are generally paid out of your assets, unless the court decides otherwise.

Whether your mandate has been notarized or prepared by a lawyer or yourself, the homologation process and the fees are the same. Furthermore, if you have given someone power of attorney to manage your property, it generally ceases to be valid when your protection mandate takes effect.

What happens if you again become capable?

Needless to say, if you regain your health and faculties, you or your mandatary can take steps to terminate the mandate. New medical and psychosocial assessments must then be submitted to the court. The powers granted in the mandate will automatically cease within 30 days of the assessments being filed if none of the people notified by the clerk (for example, your spouse, close relatives) challenges the procedure. If there is a challenge, the judge will rule on the recommendations outlined in the medical and psychosocial assessments.

What if the mandator dies?

The mandate is terminated when you die. The mandatary must then submit a final report regarding his or her administration to your heirs. The Curateur public must be notified of the mandator's death.

What if the mandatary dies?

If your mandatary dies during the mandate, the substitute mandatary named in the mandate will take over. The liquidator of the mandatary's succession must, on behalf of the mandatary, submit a final report regarding the administration of your property to the substitute mandatary. If you have not named a substitute mandatary and your principal mandatary dies, the process to institute protective supervision will commence. The Curateur public must be notified of the mandatary's death.



You are now ready to draw up your mandate.

If you need help filling out the form, refer to the instructions, glossary and checklist.

FORM

MY PROTECTION **MANDATE**

INSTRUCTIONS

- ▶ The numbers that appear in the margin of these instructions refer to the same numbers in the form.
- ▶ You can fill out the form, either:
 - ▶ on screen. You must then print it, and sign and initial each page in ink.OR
 - ▶ on paper, after printing it. You must write in ink, in block letters.
- ▶ If you make a mistake when drawing up your mandate, you can make changes to the text. Remember to initial each change.
- ▶ If you need more space for any section of the form, you can add pages by numbering them so that they refer to the appropriate section of the form.
- ▶ Make sure that your initials and those of your witnesses appear at the bottom of each page.
- ▶ Cross out all or part of the clauses that you do not want to include in your mandate.

This document always refers to the mandatary in the singular, but you may name more than one mandatary in your mandate.

1

YOU MUST CHOOSE ONE OF THE TWO OPTIONS.

Indicate the name, date of birth and address of your mandatary or mandataries as well as your relationship to each one. Check one of the boxes if you want the one remaining mandatary to continue to act on your behalf. This mandatary will then be responsible for protecting your person and managing your property. Remember, however, that if you name co-mandataries (two different mandataries) for your person or co-mandataries for your property, they will have to act jointly. This means that they will have to make all decisions together and agree on these decisions.

2

Indicate the name, date of birth and address of your substitute mandatary as well as your relationship to this person.

3

Specify your wishes regarding housing.

INSTRUCTIONS

4 Check the desired options and add any clarifications you wish.

5 Check the desired box.

6 Indicate the name, date of birth and address of the person or persons to whom your mandatary must submit an rendering of account. Also indicate how often this is to be done.

7 State your wishes regarding remuneration of your mandatary to the person and your mandatary to property.

8 Check the appropriate box.

9 Check the appropriate box.

10 Indicate the names of the persons to be consulted.

11 Indicate the name of the tutor, their relationship to your child and the name of the child.

12 If necessary, provide additional information regarding the protection of your person or administration of your property.

13 Indicate your name, address and place of birth, and sign the document.

14 Ask your witnesses to indicate their name, address and telephone number. They must then indicate the date and place, and sign the document.

This mandate cancels any previous protection mandate or mandate in case of incapacity.

1 A SINGLE MANDATARY

I, the undersigned _____, born on _____,
NAME OF MANDATOR DAY / MONTH / YEAR

hereby designate the following person to act as mandatary for protecting my person and administering my property.

NAME	DATE OF BIRTH	ADDRESS	YOUR RELATIONSHIP TO THE PERSON

OR

SEVERAL MANDATARIES

I, the undersigned _____, born on _____,
NAME OF MANDATOR DAY / MONTH / YEAR

hereby designate the following person or persons to act as mandatary or mandataries responsible for protecting my person:

NAME	DATE OF BIRTH	ADDRESS	YOUR RELATIONSHIP TO THE PERSON

I also hereby designate the following person or persons to act as mandatary or mandataries responsible for administering my property:

NAME	DATE OF BIRTH	ADDRESS	YOUR RELATIONSHIP TO THE PERSON

Check if desired

- If two mandataries are designated (one for my person and one for my property), and if either of them resigns, dies or becomes legally incapacitated, the remaining mandatary will act as if they alone had been designated.
- If more than one mandatary is designated for my person or more than one mandatary is designated for my property, and if either of them resigns, dies or becomes legally incapacitated, the remaining mandatary will act as if they alone had been designated.

FORM

2 SUBSTITUTE MANDATARY

If you have designated a single mandatory

If my mandatory is unable to act for whatever reason, I designate the following person or persons to act as substitute mandatory or mandataries:

ORDER OF APPOINTMENT	NAME	DATE OF BIRTH	ADDRESS	YOUR RELATIONSHIP TO THE PERSON
1				
2				

OR

2 SUBSTITUTE MANDATARY

If you have designated several mandataries

If the mandatory responsible for protecting my person is unable to act for whatever reason, I designate the following person or persons to act as substitute mandatory or mandataries:

ORDER OF APPOINTMENT	NAME	DATE OF BIRTH	ADDRESS	YOUR RELATIONSHIP TO THE PERSON
1				
2				

If the mandatory responsible for administering my property is unable to act for whatever reason, I designate the following person or persons to act as substitute mandatory or mandataries:

ORDER OF APPOINTMENT	NAME	DATE OF BIRTH	ADDRESS	YOUR RELATIONSHIP TO THE PERSON
1				
2				

PROTECTION OF MY PERSON

3 HOUSING

If possible, I would like to live at home. However, if my health requires me to live in a setting that is safer and better suited to my needs, my mandatary to the person will make decisions in keeping with the circumstances, while taking into account the following wishes:

4 END-OF-LIFE WISHES

In all decisions concerning end-of-life care required at the end of my life, my mandatary must consider:

- My opposition to any form of aggressive therapy. I wish to die with dignity, with the required supportive care and comfort and proper medication to relieve my suffering, even though it may accelerate my death.
- Other details and wishes:

ADMINISTRATION OF MY PROPERTY

5 POWERS OF ADMINISTRATION

I grant my mandatary the power to administer my moveable and immoveable property according to the rules of (*check one of the following options*):

- Simple administration (collect income, ensure the day-to-day management of my affairs, and preserve and maintain my moveable and immoveable property, etc.)
- Full administration (collect income, ensure the day-to-day management of my affairs, preserve and maintain my moveable and immoveable property, make my property productive, sell or mortgage an immoveable, etc.)

Clarification: I would not like the following moveable and immoveable property to be sold, unless necessary:

6 INVENTORY AND RENDERING OF ACCOUNT

As soon as the mandate takes effect, my mandatary must perform a inventory of all my moveable and immoveable property. This procedure must be performed in the presence of two witnesses or before a notary:

- Yes No

My designated mandatary must prepare an account:

- Yes No

If yes:

- Once a year Another schedule: _____

To be submitted to the following person or persons:

_____	_____
NAME	NAME
_____	_____
DATE OF BIRTH	DATE OF BIRTH
_____	_____
ADDRESS	ADDRESS

7 REMUNERATION

All expenses incurred by my mandatary in carrying out his role, including the costs related to homologation of my mandate, will be paid from my patrimony, unless the court decides otherwise.

I would like:

- My mandatary to act free of charge.
- My mandatary to be reimbursed out of my assets according to the following terms and conditions:

MANDATARY TO THE PERSON OR SUBSTITUTE WHO HAS BECOME MANDATARY	TERMS AND CONDITIONS
<p>_____</p> <p>NAME</p>	<p><input type="checkbox"/> Amount of \$ _____</p> <p style="text-align: center;"> <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Yearly </p> <p><input type="checkbox"/> Other (specify): _____</p> <hr/> <p><input type="checkbox"/> Hourly rate of \$ _____</p>

MANDATARY TO PROPERTY OR SUBSTITUTE WHO HAS BECOME MANDATARY	TERMS AND CONDITIONS
<p>_____</p> <p>NAME</p>	<p><input type="checkbox"/> Amount of \$ _____</p> <p style="text-align: center;"> <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Yearly </p> <p><input type="checkbox"/> Other (specify): _____</p> <hr/> <p><input type="checkbox"/> Hourly rate of \$ _____</p>

OTHER CLAUSES

8 PARTIAL INCAPACITY

If my incapacity is only partial, I nevertheless wish this mandate to be homologated with all the powers specified in it:

Yes No

9 REASSESSMENT OF MY CONDITION

I would like my mandatary to request a reassessment of my condition.

Yes No

If yes: My mandatary must have new medical and psychosocial assessments conducted every (___) years after this mandate is homologated in order to reassess my condition. After receiving these assessments, my mandatary must make all necessary decisions to ensure that this mandate is either maintained or revoked in conformity with these assessments.

10 CONSULTATION

If my mandatary deems it appropriate, he or she will consult the most significant persons among my friends and family for any decision regarding the homologation or execution of this mandate.

Yes No

NAME OF PERSON TO CONSULT

ADDRESS

NAME OF PERSON TO CONSULT

ADDRESS

NAME OF PERSON TO CONSULT

ADDRESS

11 TUTOR TO MINOR CHILDREN

If, at the time of homologation of this mandate, one or more of my children are minors and must be represented, I appoint the following person or persons to act as tutor or tutors:

NAME OF TUTOR	THE TUTOR'S RELATIONSHIP WITH MY CHILD	NAME OF CHILD

12 OTHER INSTRUCTIONS

Other details or wishes concerning the protection of my person:

Other details or wishes concerning the administration of my property:

FORM

13 SIGNATURE OF THE MANDATOR

I, the undersigned, _____
NAME OF MANDATOR

FULL ADDRESS

have signed this mandate at _____
PLACE

on _____
DAY / MONTH / YEAR SIGNATURE OF MANDATOR

14 DECLARATION BY THE WITNESSES

We declare that this person was fully capable of preparing this mandate and that we have no personal interest in it (for example, as mandatary, substitute mandatary or person who receives the report).

In witness whereof, we have signed at _____ on _____
PLACE DAY / MONTH / YEAR

NAME OF WITNESS

NAME OF WITNESS

FULL ADDRESS

FULL ADDRESS

TELEPHONE NUMBER

TELEPHONE NUMBER

SIGNATURE OF WITNESS

SIGNATURE OF WITNESS

✓ Did you...

- fill out the form:
 - ▶ on screen? You must then print it, and sign and initial each page in ink;OR
 - ▶ on paper, after printing it? You must write in ink, in block letters.

- initial changes?

- sign and date section **13**?

- have your witnesses sign section **14**?

- and your witnesses initial the bottom of each page of the form and the appendices, if applicable?

My Protection Mandate will guide you through the process of naming a mandatary who will look after you and your property should you become disabled because of an illness or accident. It tells you everything you need to know about choosing a mandatary and the different clauses that may be included in the protection mandate.

Stay in control: choose now who will take care of you and your property should you become incapacitated.

curateur.gouv.qc.ca/mandate

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