

Your reference guide for acting as a mandatary under a protection mandate



RBC Royal Trust

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RBC Royal Trust® has been serving Canadians since 1899. We provide individuals, families and businesses with valuable estate, trust and incapacity solutions tailored to their specific needs. Our clients are often dealing with unique and complex issues, and want a personal relationship with a skilled advisor who can deliver tailored, thoughtful solutions.

Our RBC Royal Trust team comprises specialized and experienced professionals including legal counsel, accountants and other specialists with years of estate and trust experience. We are an exceptionally strong professional trust services firm, supported by the strength, stability and resources of RBC®, one of Canada's largest banks.

What we offer our clients

- Guidance through life events and times of transition with expertise, empathy and efficiency
- Compassion and understanding of the family's experience
- Peace of mind knowing that there is stability and continuity in the long-term relationship with beneficiaries
- Assistance in the preservation, management and transfer of wealth from one generation to another by providing solutions to implement clients' estate and trust plans
- Financial security to Canadians who require assistance in the management of their affairs as they grow older



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For more information, speak with an RBC advisor, call us at **1-855-833-6511** or visit our website at rbc.com/royaltrust.

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Introduction

Acting as a mandatary* (under a protection mandate) is a tremendous responsibility and one that should not be given—or taken on—without careful consideration. If you have been appointed as a mandatary, you are required to act exclusively for the benefit of the individual who appointed you. This is a complicated undertaking—one that can seem especially overwhelming if you are also caring for a loved one.

In fact, mandataries can face responsibilities that demand a great deal of time, energy and attention to detail. If you have been appointed as a mandatary for property, RBC Royal Trust can offer you a variety of administrative services to assist you with as many of your mandatary duties as you require.

This brochure provides you with information on the duties of a **mandatary appointed under a mandate for property**** and how you can get help with those duties. It's intended as an information resource to support you with your attorney duties, not as a substitute for professional advice. At the end of this brochure, we have included a checklist for your reference that summarizes the range of tasks that you may need to get involved in.

* In Quebec, the person who sets up the protection mandate is known as the “mandator” and the individual chosen to act on the mandator's behalf is called the “mandatary.”

** Throughout this brochure, we will be using the term “mandate” to represent a protection mandate for property. For information or questions related to mandates for personal/health care, please contact your legal counsel.

What is a protection mandate?

A protection mandate (“mandate”) is a legal document in which one person gives another person(s) or trust company the authority to act on their behalf. The person who sets up the mandate is known as the “mandator,” and the individual chosen to act on the mandator’s behalf is called the “mandatary.” For both the mandatary and the mandator, it is crucial to understand exactly what their role entails and what is required under the law.

Anyone of legal age and capacity can establish a mandate, regardless of the value of the assets to be managed. Despite the name, a mandatary does not need to be a legal counsel; a mandatary can be almost any individual (subject to certain restrictions) or a professional such as a trust company. In many cases, the mandatary may also be the same person named as the liquidator of the mandator’s estate.

Mandate for property

This type of mandate appoints a person(s) or trust company to make decisions about property, finances, assets and investments on the mandator’s behalf in the case of incapacitation.

The mandate can be drawn up before a notary by notarial act *en minute* or before two witnesses who will not benefit from the mandate. The mandate executed before a notary is registered with the *Chambre des notaires du Québec* so that it can be located easily should the mandator become incapable, thus guaranteeing that the mandator’s wishes will be respected.

To take effect, a mandate must be “homologated,” or approved, by the court. This process formally establishes the incapacity of the mandator and the validity of the mandate.

Note: A power of attorney is used for the administration of property only when the donor (the person who established the power of attorney) is still capable. A protection mandate goes further and can cover the administration of property and also contains provisions for the mandator’s protection when they become incapable.

If someone becomes incapacitated without having signed a mandate, the law provides for their protection and representation by opening a protective supervision regime of tutorship.

Mandate for personal/health care*

This type of mandate appoints a person(s) to make personal and health care decisions on the mandator’s behalf. It may also instruct doctors and other caregivers as to the kind of personal or medical care the mandator may want, or does not want, should they ever become incapable of making those decisions.

In Quebec, the mandate for property and the mandate for personal/health care are generally in the same legal document, and they may or may not appoint the same person as mandatary.

* This brochure will focus on mandates for property only.

What does it mean to be a mandatary?

Your overall responsibility as a mandatary is to act honestly, in good faith and in the best interests of the mandator. Upon the incapacity of the mandator, you, as mandatary, must ensure that the mandate becomes effective. This means proving the incapacity by means of medical, psychological and social assessments, and establishing that the mandator's consent to the mandate is valid. You may do this by applying to the court for the homologation of the mandate or by asking a notary certified for homologation to follow the procedure established by law. The mandate becomes effective only upon its homologation by the court.

The wording of the mandate, and applicable laws, will determine the scope of your authority as mandatary, and will outline any limits on your actions. Before assuming your responsibilities as mandatary, you should confirm whether you are the only named

mandatary or if others have also been named. If there are other named mandataries, the mandate document will also outline whether you may act "jointly and severally" (i.e., make binding decisions independent of each other) or whether all mandataries must approve each action taken "jointly" on the mandator's behalf.

It's also a good idea to determine whether the mandator created any power of attorney documents at their financial institution(s) related to the assets held in those institutions prior to becoming incapable. Upon the homologation of the mandate, the power of attorney will no longer be valid, and the attorney (the individual chosen to act on the mandator's behalf while still mentally capable) will lose their authority over the assets of the mandator.



Typical duties of a mandatory

The responsibilities of a mandatory may include:

- Consulting and communicating with the mandator, if possible, as well as the mandator's family
- Managing and safeguarding the assets
- Keeping detailed records of all transactions involving the mandator's property, and ensuring tax returns are filed
- Working with the mandatory for personal/health care to ensure the mandator has the necessary financial resources*
- Making expenditures on the mandator's behalf for their support and care, and for the support and care of any of their dependants

- Preparing an annual rendering of account, when required, and final rendering of account at the termination of the mandatory's duties and at the termination of the mandate

Compensation

As mandatory, you may be entitled to receive financial compensation. The fee may be stipulated in the mandate document, but if no mention is made, the mandatory will not be entitled to any compensation except the refund of reasonable expenses. Any compensation you receive, with the exception of reimbursement for direct expenses, is taxable as income.

Termination

Your mandatory obligation ends when any of the following occur:

- The court ascertains that the mandator has again become capable
- The mandator passes away
- You become incapable of fulfilling your duties as mandatory
- You resign as mandatory after having arranged for your replacement, if the mandate provides for it; or you have applied for the institution of a protective supervision in respect of the mandator
- You pass away

* There may be additional criteria set out by each province/territory for the termination of an attorney's authority.

Things to consider

Many people feel overwhelmed by the thought of being responsible for managing the financial affairs of a loved one. There are also other circumstances where the services of a professional, such as a trust company, can provide valuable support, including:

Complex family dynamics—Acting as a mandatory can often create family conflict or renew existing family discord. A mandatory may feel pressure from other family members or friends to act in a way that may not be consistent with what the mandator would have wanted. As mandatory, you need to communicate openly with the mandator and the mandator's family and balance potentially conflicting interests. An unbiased third party can often be an invaluable resource in managing those tensions.

Time constraints—Many mandataries are unaware of how much time managing someone else's finances requires. In some cases, a mandatory's tasks span several years, and the level of care needed may escalate over time. People with busy lives and competing time pressures of children, a career and caring for aging parents are often challenged to carry out their mandatory duties in a timely manner.

Lack of expertise—As mandatory, you might feel that you lack the professional skills needed to handle some of the more technical aspects of the job such as recordkeeping, managing investments and ensuring tax returns are filed. A professional, such as a trust company, can carry out any or all of the duties you don't feel comfortable handling yourself, while you retain your decision-making authority.

Living outside the province or country—It is challenging to act as a mandatory from a distance. If you live in a different jurisdiction than the mandator, there may be additional risks due to the legal, logistical and administrative complexities in managing the mandator's affairs from afar. You may also be impacted personally or professionally, particularly if you are also providing or arranging personal health care for the mandator.

Personal liability—As mandatory, you can be held personally liable by the mandator or the liquidator of the mandator's estate if any of your actions as mandatory come into question or are inadequately documented. The law requires mandataries to demonstrate that they are fulfilling their duties, with potential legal consequences if they cannot demonstrate this.

If you have questions about your mandatory duties, speak with an RBC advisor, call us at 1-855-833-6511 or visit our website at [rbc.com/royaltrust](https://www.rbc.com/royaltrust).

RBC Royal Trust can help



Caring for a loved one is difficult enough without the added demands of being named mandatary. If you have agreed to be a mandatary and are feeling overwhelmed by the duties involved, are unsure how to proceed or simply lack the time and expertise required to carry out your duties, we are here to help.

Our services

Having an experienced professional at your side can provide welcome assistance during a difficult and challenging time. An RBC Royal Trust professional can help you assess the tasks and responsibilities that you face and offer a customized level of support. You can choose which tasks you need help with including (but not limited to):

- Handling the ongoing administration of the mandator's assets, such as bill payments, income collection and property management
- Consolidating the mandator's accounts and assets to ensure the safekeeping of assets, the simplification of management and the reduction of fees
- Maintaining records of all transactions related to the ongoing administration, and providing court accounting statements
- Reviewing the existing investment portfolio to ensure that it is in alignment with the mandator's needs


- Managing the mandator's portfolio to ensure that their investments are looked after with the degree of care, skill and diligence required
- Arranging for the sale of real property and the disposition and/or safeguarding of household goods and personal effects
- Preparing the mandator's tax returns and making any necessary payments
- Preparing periodic (if any) and the final rendering of the account

Throughout the process, you will receive attentive, reliable expertise and regular communication on everything you need to help you carry out your specific mandatary duties.

Our RBC Royal Trust professionals are skilled in the intricacies of mandate administration from both an emotional and technical perspective. We are sensitive to the complexities of your unique family dynamics and approach each situation with compassion and professionalism to make the process as easy on you as possible.

How much will it cost?

Recognizing that every situation is unique, we offer personalized and customizable support so that you pay only for the services you choose. In addition, using RBC Royal Trust may ultimately save money for the mandator because of the skill and experience your RBC Royal Trust advisor provides.



The value of having a partner look after all of the details

Mike is 47 years old and is married with two children. He is a sales manager with a manufacturing company and is required to travel frequently. He is also heavily involved in volunteer activities within his community and coaches his son's hockey team.

Mike's father, John, who is a widower, recently suffered a sudden stroke and no longer has the capacity to make his own financial and personal care decisions. John's mandate document for his property and personal/health care appointed Mike as his mandatary. In addition to making decisions regarding his father's medical care, Mike also had to assume the responsibility of looking after his father's financial affairs.

Mike struggled to keep up with the demands on his time and received late payment notices for unpaid bills pertaining to the family home. In addition, Mike was also advised that he would need to make alternate care arrangements for his father who was no longer able to live in the family home independently.

Much to Mike's surprise, his father had been dealing with multiple financial institutions, held share certificates in a safety deposit box and had several uncashed dividend cheques. Mike realized that he needed some assistance in order to simplify the management of his father's finances.

A close friend recommended that Mike meet with an RBC Royal Trust

advisor who had helped her when she was going through a similar situation. After meeting with the advisor, Mike hired RBC Royal Trust to:

- Prepare a complete inventory of his father's assets along with a cash flow statement, which would be updated annually
- Consolidate his father's assets in one account
- Arrange for his father's employment and government pensions to be automatically deposited into the account
- Redirect all his father's bills to RBC Royal Trust for payment
- Assist with the sale of the family home
- Prepare and file his father's annual tax return including payment of his quarterly tax instalments
- Arrange for the management of his father's investible assets
- Provide quarterly accounting statements
- Prepare and provide a rendering of account in accordance with the requirements of the mandate or the court, if any

Mike was very pleased with the compassion, professionalism and expertise of the RBC team. He no longer had to worry about his father's financial affairs and could focus on spending more quality time with his father and the rest of his family.



Welcomed support given complex family dynamics

Linda, a widow and mother of five children, began to experience common symptoms of Alzheimer's disease. She was becoming increasingly forgetful, had difficulty communicating and exhibited frequent changes in mood and behaviour. Unfortunately Linda had become incapable of making her own financial and personal decisions.

Linda had established a protection mandate several years back and had named her youngest daughter, Michelle, as mandatary for her property and financial affairs. This responsibility only added to the difficult and complex relationship that Michelle had with her four siblings, all of whom were also beneficiaries of Linda's estate. While everyone agreed that Linda should be placed into a private nursing care home, there was disagreement as to how her long-term care should be financed. One of Michelle's brothers strongly believed that Linda's care should be financed from the sale of her \$500,000 home. Michelle's sister was reluctant to sell the home as she had hoped to inherit it in Linda's Will and argued that Linda's care should be financed with the income from her investment portfolio. Family arguments became quite heated, and Michelle became increasingly overwhelmed about making the right decisions for her mother.

Michelle contacted an RBC Royal Trust advisor to provide the analysis needed to help her make a decision, and to also serve as an unbiased third party in dealing with her family. An RBC Royal Trust advisor met with Michelle to discuss all the various services available. Michelle hired RBC Royal Trust to consolidate all of Linda's assets and prepare an income and expense statement. The analysis indicated that Linda faced a \$40,000 per year cash flow shortfall. If the children did not make a decision about selling the home soon, her investment portfolio would likely be depleted within 5 to 10 years, assuming there would be no unexpected expenses or increases in her personal care costs. Based on the presentation to the family, Michelle and her siblings agreed that selling the home soon was the best option for financing their mother's personal care.

Michelle was grateful to RBC Royal Trust for providing the necessary analysis to help them make the best decision for their mother and limit the family conflict.

Typical duties of a mandatary for property

The specific functions that a mandatary performs will vary according to the personal needs of the individual mandator and the assets to be managed. The scope of the power given to the mandatary and any restrictions on the mandatary are contained in the document itself and applicable provincial legislation.

The following describes some of the general duties that a mandatary would ordinarily be expected to carry out, but may not be a complete list of all the duties required of a mandatary.

Always act in the best interests of the mandator

When making decisions, you must first consider the well-being of the mandator. You should also attempt to help the mandator maintain as much independence as possible. That means involving the mandator in decisions wherever feasible, and making sure that those decisions reflect what the mandator would want. For example, if a mandator wanted to continue living at home but required 24-hour care to do so, the request should be respected unless the mandator's funds could not support it.

Fulfil the duties with prudence, diligence and integrity

At no time should you ever borrow money from the mandator, even if you

are a named beneficiary. Unless given very specific powers by the mandator in the mandate, it is not appropriate for mandataries to place themselves in any conflict of interest where they may be placing their own interests above those of the mandator. This includes allowing mandataries to take any unauthorized profit or property from the mandator. The mandator's money and property should be kept completely separate from your own.

Note: As mandatary, you do not assume personal ownership of any of the mandator's assets, nor are you personally responsible for any of the mandator's debts unless you are a co-debtor or guarantor.

Communicate openly with the mandator as well as the mandator's family

Ideally before you begin acting as mandatary, you and the mandator should discuss your duties as mandatary to ensure there's a mutual understanding of your role and the mandator's expectations. It's also important for you to consult with the mandator's close family members and caregivers regarding the mandator's needs and your ongoing work as mandatary. Equally important is helping the mandator to maintain contact with supportive family and friends.



Keep meticulous records

Maintaining detailed records may be a tedious part of your role as mandatory, but it is vital that you keep detailed records of all the transactions and decisions you make on the mandator's behalf. Avoid outlays of cash that cannot be confirmed by receipts. It is important not to commingle the assets or cash of the mandator with your own in order to clearly facilitate the accounting. You will be asked to provide an accounting on a regular basis, which would entail showing all of the assets owned by the mandator, any changes to that ownership and all transactions of funds or assets flowing into, and out of, the mandator's accounts.

Generally, the records you should maintain for a mandate for property include:

- A certified copy of the judgment of homologation including a copy of the mandate
- Copies of any court orders related to the mandate, if any
- A list of the mandator's assets as of the date you took over their management including real property, money, securities, investments, motor vehicles and other personal property

- A list of the mandator's liabilities as of the date of your first action as mandatory
- Ongoing lists detailing assets acquired and disposed of, money received and paid out, investments made, and liabilities incurred and discharged on the mandator's behalf; all with notes documenting the date of, reason for and parties involved in the transaction
- An ongoing list of all compensation taken by the mandatory, if any, with detailed notes
- A list of the assets (and values) used to calculate the mandatory's management fee

Safeguard assets

This includes taking an inventory of all of the mandator's assets, and taking steps to secure them upon the homologation of the mandate. It also includes contacting any financial institutions to ensure you begin to receive copies of statements for any bank or investment accounts, and confirming that current and adequate insurance is in place for physical assets including real estate, automobiles and personal effects.

The specific duties and obligations applicable to your own mandate will of course be unique, and you should, in all cases, seek competent legal advice.

Expenditures

As mandatory, you may be responsible for making expenditures on the mandator's behalf for their support and care and for any of their dependants. If you are unsure about whether you can make certain expenditures, you may want to consult with your legal counsel to determine whether there are any rules about making required expenditures and optional expenditures on behalf of the mandator, and the order in which they may be paid.

Financing personal/health care

If you are only appointed as the mandator's mandatory for property, you will need to work together closely with the person(s) appointed as the mandatory for personal health care to ensure the mandator's best interests are met. For example, the mandatory for personal/health care is responsible for making decisions about the mandator's health care, shelter, clothing, hygiene and safety. If the mandator is incapable and the mandatory for personal/health care makes a decision to have their care provided in a long-term care facility, you will be called upon to ensure the mandator has the financial resources to pay for the long-term care facility.

Review investments and meet with a financial advisor

You are responsible for the proper management of the mandator's investments. It is therefore prudent to meet with a qualified financial

advisor to review the mandator's current portfolio and ensure that it is structured appropriately to meet the mandator's current and future needs. Once you are satisfied with the portfolio, you should review it frequently to monitor it for any necessary adjustments.

Rendering of account

You may have to render a periodic account of your administration if the mandate requires it. Furthermore, at the end of your administration, you will also have to provide a final accounting to your successor or the heirs of the mandator, whatever the case may be. If you predecease the mandator, the liquidator of the estate will have to provide the final accounting of your administration to your successor as mandatory.

Safeguarding records

All records related to your mandatory duties are to be considered confidential. You should share them only with any other named mandataries, the person(s) to whom the mandataries have to render an account according to the mandate or the law, or the liquidator of the mandator's estate upon the mandator's death.

You must maintain all records until your appointment as mandatory is terminated and your final rendering of account has been approved by the mandator, if they again become capable, a successor mandatory or the mandator's heirs, depending on the situation.





Mandatory for property duties checklist (Quebec)



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This document is also available in French.

The following checklist summarizes the range of tasks that may be involved in assuming mandatory duties (under a protection mandate for property) for a mandator. The extent to which these duties should be performed by the mandatory will depend on the circumstances of the mandator, and as such, not all may be applicable.

If you have questions about any of the duties listed or want more information about how you can get help from an RBC Royal Trust professional, please call 1-855-833-6511.

Task
Preliminary steps
<input type="checkbox"/> Obtain a copy of the protection mandate
<input type="checkbox"/> Verify that the protection mandate is the most recent one signed by the mandator
<input type="checkbox"/> Ensure that any and all preconditions for acting as the mandatory have been met
<input type="checkbox"/> Confirm if others have been named to act as mandatory and in what capacity
<input type="checkbox"/> Consult with the person acting as mandatory for personal/health care regarding the health care, safety and shelter of the mandator
<input type="checkbox"/> Confirm that the protection mandate authorizes acting in respect of all or only some of the mandator's property/assets, and whether there are any other restrictions that apply (e.g., the protection mandate can restrict the investments to be made)
<input type="checkbox"/> Obtain copies of any management plans or court orders related to the protection mandate
<input type="checkbox"/> Discuss the protection mandate, and duties and authority as mandatory, with the mandator (if possible)
<input type="checkbox"/> Review the mandator's personal records and contacts, and establish a system for ensuring the organization and protection of this information and actions
<input type="checkbox"/> If there is no named mandatory for personal/health care, obtain legal advice regarding the mandator's current circumstances
<input type="checkbox"/> Notify personal attendants, housekeepers, gardeners and other staff of your role as mandatory, and advise as required
<input type="checkbox"/> Establish relationships with the close family, friends and other key caregivers of the mandator
Initial tasks
<input type="checkbox"/> Create a complete list of the mandator's assets and liabilities/debts including any digital assets such as social media accounts as of the date of your first action
<input type="checkbox"/> Locate all original investment certificates, stocks, bonds, property deeds, etc.
<input type="checkbox"/> Identify and document all other personal assets
<input type="checkbox"/> Check the Bank of Canada and Revenue Quebec websites for unclaimed balances in the mandator's name
Safeguard assets
<input type="checkbox"/> Notify all banks, brokers and financial institutions the mandator has business with that you are acting as the mandator's mandatory; confirm whether the mandator executed any other protection mandate with them, and redirect statements if necessary
<input type="checkbox"/> Review the suitability of the mandator's investment portfolio and any surplus cash, making any necessary and allowable adjustments to meet the mandator's current and future needs; monitor the investment portfolio on a regular basis

Task
Safeguard assets (continued)
<input type="checkbox"/> Notify appropriate institutions and redirect annuities, pensions and registered funds as required
<input type="checkbox"/> Notify the appropriate authorities and redirect all sources of income including CPP/QPP, OAS, Veteran's Pension Payments and GST/HST credits
<input type="checkbox"/> Apply for any pensions or other payments to which the mandator may be entitled
<input type="checkbox"/> Notify insurance companies or other institutions regarding auto, home, disability or life insurance that we are acting as the mandator's mandatary, and redirect statements if necessary
<input type="checkbox"/> Ensure adequate insurance for the assets and management of any real property
<input type="checkbox"/> Cancel auto registration and insurance, if applicable, and collect any refunds
<input type="checkbox"/> Cancel the mandator's debit and credit card(s), if applicable
<input type="checkbox"/> Cancel memberships and other subscriptions if required
Prioritize expenditures
<input type="checkbox"/> Create a monthly budget consisting of all income expected and payments required to ensure the mandator's immediate and ongoing financial needs can be met
<input type="checkbox"/> Pay all expenses as required
Taxes
<input type="checkbox"/> Notify Canada Revenue Agency and Revenue Quebec, provide them with a copy of the protection mandate and request a statement of account showing all outstanding taxes, refunds and instalments paid up to the current date
<input type="checkbox"/> File any outstanding and ongoing tax returns and pay all income taxes owing
<input type="checkbox"/> Collect tax slips, medical and donation receipts as required
<input type="checkbox"/> Determine whether the mandator is subject to any foreign tax jurisdictions (e.g., if the mandator is a U.S. citizen) and determine how to address the situation (seek tax and legal advice as necessary)
Keep meticulous records
<input type="checkbox"/> Establish an ongoing list of acquisitions and dispositions made on the mandator's behalf (e.g., money received, investments made, liabilities incurred or discharged), obtaining and retaining receipts for all transactions
<input type="checkbox"/> Investigate and record all debts owed by the mandator
<input type="checkbox"/> Document any compensation (including assets used in calculation) taken for mandatary duties
<input type="checkbox"/> Provide a rendering of account in accordance with the requirements of the mandate or the court, if any

For information or questions related to the protection mandate for personal/health care, please contact your legal counsel.

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