

# INFORMATION REPORT

<b>TO:</b>	Chair and Members Emergency & Community Services Committee
<b>COMMITTEE DATE:</b>	September 22, 2014
<b>SUBJECT/REPORT NO:</b>	Lodges - Power of Attorney (CES14049) (Wards 6 and 13) (Outstanding Business List Item)
<b>WARD(S) AFFECTED:</b>	Wards 6 and 13
<b>PREPARED BY:</b>	Vicki Woodcox 905-546-2424 ext.4827 Eleonora Filippone 905-546-2424 ext. 4707
<b>SUBMITTED BY:</b>	Joe-Anne Priel General Manager Community & Emergency Services Department
<b>SIGNATURE:</b>	

## Council Direction:

On March 26, 2014, Council approved Item 17 of Report 14-002 of the Audit, Finance & Administration Committee, "Homes for the Aged – Accommodation Fees and Trust Funds", which provided:

*(a) That the Management Action Plans, as detailed in Appendix "F" of Report 14-002, be approved;*

*(b) That the Acting General Manager of Community and Emergency Services be directed to instruct the appropriate staff to have the Management Action Plans (attached as Appendix "F" to Report 14-002) implemented; and,*

*(c) That Legal staff, the Director of Audit Services and the Administrator for Homes for the Aged be directed to devise a policy respecting Powers of Attorney for residents of City of Hamilton homes for the aged and report back to the Emergency & Community Services Committee.*

This report addresses paragraph (c) of Council's direction. Council wanted a policy that would provide a safe financial alternative for the residents of the Lodges, if a Power of Attorney (Property) was not in place on admission to the Lodges.

## Information:

### Power of Attorney (POA)

The provincial *Substitute Decisions Act, 1992* (the "Act"), governs substitution decision-making in Ontario, including the creation of Powers of Attorney (POA) and situations where a person does not have a POA.

There are two types of POAs:

1. A **POA for Property** allows someone to make financial decisions for a resident, such as payment of bills.
2. A **POA for Personal Care** allows someone to make health care decisions for a resident, such as medical treatment.

Given Council's direction to staff, the focus of this report will be on POAs for Property.

#### Making Financial Decisions

The term "financial decisions" includes deposits and withdrawals of money from the accommodations and personal trust account.

If a resident lacks capacity, as defined in the Act, to manage his or her own financial affairs, a substitute decision-maker will make financial decisions for the resident.

The substitute decision-maker will be determined as follows:

1. If the resident has a POA for Property, the substitute decision-maker will be the individual or individuals named in the POA.
2. If the resident does not have a POA for Property, the Act states that a Guardian for Property must be appointed to manage the financial affairs of a person who is mentally incapable of doing so for himself or herself. Depending on the circumstances, the substitute decision-maker will be appointed by the Office of the Public Guardian and Trustee (OPGT) or the court. A spouse, partner or relative may apply to be appointed.

Whether a substitute decision-maker is appointed by a POA or by the OPGT or court, his or her power to make financial decisions on behalf of the resident is essentially the same.

For the purposes of the Lodges, the usual scenario is that POAs will take effect when residents lack capacity; in other words, they are unable to make decisions for themselves. According to the Act, "[a] person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision."

If a resident does not have a POA for Property and it becomes evident that a resident is no longer able to manage his/her finances, the Social Worker in consultation with the Director of Nursing or Administrator will retain the services of "capacity assessors" to assess the resident's capabilities. If the assessment confirms that the resident is mentally incapable of managing his or her financial affairs, the Act requires a Guardian

for Property to be appointed for such resident. As stated above, depending on the circumstances, the substitute decision-maker will be appointed by the Office of the Public Guardian and Trustee (OPGT) or the court. A spouse, partner or relative may apply to be appointed.

While it is beneficial to residents to have POAs in place upon admission to a Lodge, the City cannot require residents to have one. City staff, however, can educate residents about the benefits of having POAs and encourage them to obtain one. As of July 2014, 88% of residents at Wentworth Lodge and 79% of residents at Macassa Lodge have POAs.

#### Disclosure of Financial Information

The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) governs the disclosure of personal information, including financial information, of an individual.

Residents may provide a verbal or written consent to the City, allowing the City to disclose their financial information (such as the amount of money remaining in their personal trust account) to the individuals named in the consent. This could include their spouse, partner and children. Written consents are preferred to verbal consents.

Even though some residents, as indicated above, do not have a POA in place, 95% of the residents have designated an individual(s) to assist them with their financial affairs, which includes receiving and paying bills as well as depositing funds into the accommodations and personal trust account.

As a result of the concerns raised by Council, staff have now implemented a requirement that (i) all existing residents with no POA for Property in effect; and, (ii) new residents, complete a written consent form ("Disclosure of Financial Information") naming specific individuals who can receive information about their billings and resident trust account. This disclosure of information will ensure that each resident, including those identified as not having a POA for Property in effect, has a designated person to assist with their finances as required. The Disclosure of Financial Information will not be a substitute for a POA for Property; however, it will at least allow the Lodges to inform the designated person about the financial state of the resident, which will in turn prompt the designated person to assist the resident in managing his/her affairs.

#### Deposits to a Personal Trust Account

Anyone may deposit money into a personal trust account. Past practice allowed family members who were acting on behalf of the resident to deposit money and also see the trust account balance. This results in residents' confidential financial information being released to unauthorized parties. Staff have made changes to the system, so that the amount remaining in the personal trust account will not be disclosed to the depositor, unless the resident has consented to such disclosure.

**Conclusion**

In conclusion, the Lodges have revised their policy as it relates to financial management of the accommodation and personal trust accounts. Highlighted below are the specific provisions of the policy:

- All residents on admission will be encouraged to complete POAs;
- All new and existing residents who do not have a POA for Property in effect will complete a Disclosure of Financial Information that will provide written consent for family members (or designate) to obtain their financial information; and,
- Individuals who deposit funds into a personal trust account will not receive a balance unless they are the POA for Property or are named in the Disclosure of Financial Information.