

# WHY MAKE AN ENDURING POWER OF ATTORNEY?



Hong Kong

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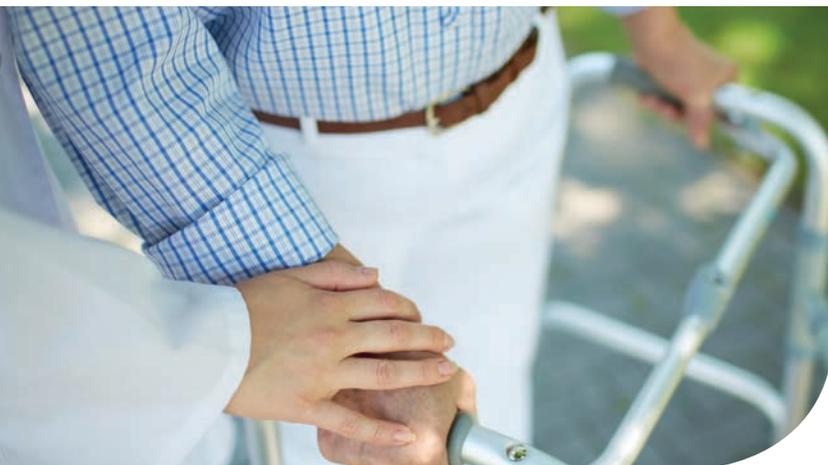
**STEP**   
ADVISING FAMILIES ACROSS GENERATIONS

## The benefits of drawing up a will are widely recognised. In doing so, you make provision for the winding up of your affairs after death.

This not only has advantages for those who will find themselves administering your estate, but also gives you peace of mind, knowing that you have selected as executors the individuals best suited for the role and have given them the necessary instructions. (For further details see STEP's brochure 'Why make a will?').

Less well known are the opportunities available to make provision in advance for the possibility of becoming incapable of managing your own financial affairs during your lifetime. This becomes increasingly important as the risk of supervening mental incapacity grows through longevity, illness or accident. An ordinary power of attorney is not an effective provision because it is automatically revoked by mental incapacity – just at the time when it is most needed.

The High Court has power to appoint people to manage your financial affairs, but the procedure can be costly and time consuming. More importantly, you will have lost the right to choose who will have the responsibility for looking after your affairs at a time when it is vital that they are dealt with efficiently and sympathetically. The better solution is, while mentally capable, to appoint someone to safeguard your interests and to act on your behalf if necessary as regards your property and financial affairs. You can do this in the form of an Enduring Power of Attorney, also called an 'EPA'.





## ENDURING POWERS OF ATTORNEY

An EPA differs from an ordinary power of attorney in that it remains valid even after the individual granting the power becomes mentally incapable. At the time the power is given, however, you must be capable of understanding its nature and effect for it to be valid. An EPA will enable the attorney not only to benefit the donor, but also other persons if the donor is expected to provide for these persons' needs (e.g. spouse and dependent children).

### **The EPA is very flexible:**

- You may appoint more than one attorney to act either together or separately
- You may limit the scope of their authority; some examples of limitations are requiring them to obtain the consent of another person before entering into certain transactions or limiting the authority to extend only to part of your property and financial affairs
- You may provide that their authority to act on your behalf only commences when you lose your mental capacity, or they may have authority with immediate effect
- You may revoke it at any time while you are mentally capable

A professional attorney, such as a solicitor, accountant or other member of STEP, is entitled to make a reasonable charge for his or her services, but a specific authority to do so by way of a charging clause is a matter of good practice, and its insertion is encouraged by STEP.

## THE ATTORNEY'S DUTIES

When you appoint an attorney under an EPA, your attorney also signs the document and acknowledges that he or she is under a legal duty to apply to the Court and register the EPA with the Court if you begin to lose your mental capacity. There is a fee to be paid when registration is applied for. You may nominate yourself, any attorney who does not join in the application for registration of the EPA and a maximum of two other persons to be notified by your attorney(s) before he or they applies or apply to the Registrar of the High Court for registration of the EPA. Once the EPA has been registered, even if you have lost your mental capacity, your attorney's power will continue and will not be automatically revoked because of your mental incapacity. As soon as your bank, stockbroker and others who deal with your financial affairs have been notified that the power has been registered, your attorney's authority will continue.

## THE COURT'S ROLE

Your attorney is always subject to the Court's jurisdiction. For example, if your attorney is authorised to use your assets to make gifts on your behalf in limited circumstances and the attorney goes further than this, the Court may make an order for a refund or compensation. The Court has jurisdiction to revoke or vary an enduring power. The EPA itself can only be made in the prescribed form and must be signed in the prescribed manner in the presence of both a registered medical practitioner and a solicitor, who will both certify on the form as to your mental capacity when you sign the form. If you attempt to use your own form there is a substantial danger that your EPA will not be valid.



## YOUR SOLICITOR'S ROLE

The primary role of a solicitor advising you about an EPA is to ensure that you understand just what is involved and, if the time comes (and we very much hope it will not), arrange for it to be registered on behalf of your attorney. If you wish, you may appoint a professional advisor to be your attorney, although we would recommend you also appoint a trustworthy friend or relation to deal with your other personal affairs on a day-to-day basis. Solicitor members of STEP have considerable experience in giving advice to attorneys on the legal and practical aspects of their role and, where necessary, making applications to the Court on their behalf.

## WHAT IS STEP?

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries from a range of professions, including lawyers, accountants and other specialists. What connects our members is that they all help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

This leaflet and the companion leaflets 'Why make a will?', 'What to do when someone dies' and 'What is a trust?', have been prepared by the STEP Hong Kong Branch. These and other informational leaflets produced by STEP, are available to view and order at [www.step.org/leaflets](http://www.step.org/leaflets)

This booklet was revised and updated in May 2015 by John Budge TEP, and assumes Hong Kong law is applicable.

For further details of our members practising in your area, contact the STEP Hong Kong office or visit: [www.step.org/online-directory](http://www.step.org/online-directory)

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