WHY MAKE A WILL?
This booklet is a brief guide to making a will. It explains five important reasons for making a will and keeping it up-to-date. These are:

1. To avoid intestacy
2. To deal with important matters
3. To deal with your assets
4. To say who benefits
5. To ensure your will remains appropriate

1. TO AVOID INTESTACY

You should make a will if you wish to control what happens to your property on your death. If you die without having made a will (known as dying ‘intestate’), your property will pass according to the laws of ‘intestacy’. Even if you have made a will, entering into a marriage will revoke it (unless you made it ‘in contemplation’ of the marriage).

The laws of intestacy may not reflect your wishes. For example, if you die intestate when you are married –

- and you have children, on your death the survivor may have to share your property with your children, and the children will take their share at the age of 18. This may mean that the survivor receives too little and the children take the property at too young an age;

- and you do not have children, on your death the survivor may have to share your property with your parents or even your siblings

If you die intestate when you are unmarried –

- and you do not have children, your estate will be shared equally between your parents if they are alive;

- and you live with a partner, your partner will not generally have any rights under intestacy and will receive nothing

Also, if you die intestate, you are not able to control who will administer your estate when you die. Broadly speaking, the people entitled to your property will also wind up your estate and they may not have the necessary skills to do this.
2. TO DEAL WITH IMPORTANT MATTERS

The appointment of guardians
If you have children who are under the age of 18, it is important that you record who should look after them if you die. Before you appoint someone to be a guardian, you should check that he or she would be happy to act. You should consider carefully whether it is appropriate to appoint the same person to act both as guardian and as trustee of any ongoing will trusts (see section 4).

The appointment of executors and trustees of will trusts
The job of an executor is to collect in your assets, pay debts and any taxes due, and distribute your estate among the beneficiaries. The role of executor is very important and you should appoint people who have the right set of skills and in whom you have confidence. As mentioned, if you die intestate, you lose the opportunity to decide who will be your executors. You can appoint any adult to act as your executor. It is common to appoint at least two executors; often one is a professional and the other is someone with knowledge of family circumstances. If there is a trust established in your will, you will need to consider whether your executors should also act as ongoing trustees or whether someone else should be appointed instead.

Burial arrangements
You can provide for specific funeral arrangements. This is particularly important for some clients. Some people ask for their body to be donated to medical research. Often, people who have suffered from prolonged illness want to help reduce other people’s suffering by helping to find new treatments.
What property is covered by a will?
You should take legal advice on which property can actually pass under your will. Only property in your ownership at the date of your death will be covered. Certain types of jointly owned property will pass to the surviving owner automatically. For example, if you co-own a house with another person as joint tenants, on your death your share of the house will pass to your surviving co-owner and not under your will. The same commonly applies to joint bank accounts. Life insurance policies and pension arrangements written into trust will not usually pass under a will.

Types of gift (including flexible gifts)
If you have a particular item of property (for example, a family heirloom) that you want to leave to someone, this can be set out in your will. Alternatively, if you cannot decide now how to divide your personal possessions, you can leave them to an individual to distribute according to a letter of wishes. You can write this letter, and if necessary change it, at any time before your death, without any formalities. You will need to decide who should take the remainder of your property.
Under Hong Kong law, there are no forced-heirship rules and you can leave your property to whomever you wish. As gifts to one’s immediate family are the most common type, we have set out below issues relating to gifts to spouses and gifts to children and young adults. However, various categories of people (for example, spouses, former spouses, children, and surviving cohabitants who were wholly or substantially maintained by the deceased person immediately before that person’s death) have the right to make a claim against a person’s estate under the Inheritance (Provision for Family and Dependants) Ordinance (Cap 481). This is on the basis that person’s will has not made reasonable financial provision for them.

**Gifts to spouses**

You could leave property to your spouse either outright or in a trust under which he or she is entitled to the income from the property (or, if the asset is a house or flat, the occupation of the property) but not the capital. If you do include a trust in your will, the trustees can be given power to give your spouse capital and you can give them guidance on when to do this. A trust for a spouse may be suitable if it is appropriate for trustees to keep control over capital. This could be the case where there is, or may be, a second marriage.

**Gifts to children/young adults**

If you wish to leave a legacy to a minor child or young adult there are various ways to do this. You must decide whether the child or young adult is to take the gift outright, or conditional upon reaching a particular age (for example, 18 or 25), or whether he or she is only to have the right to income, the capital passing to someone else (for example, a grandchild).

It should be noted that unless you state otherwise in your will, references to ‘children’ include illegitimate and adopted children but not step-children. You may therefore wish to consider whether to include other children of the family.

**Longstop provisions**

When writing a will you should decide who should take the property in substitution if your first choice recipients die before you or die before taking capital outright. You may wish to consider naming your favourite charity as the longstop recipient.
After you have made your will, it is important that you review it regularly (at least every five years) and, in particular, after any significant changes in your life, for example, entering into a relationship, relationship breakdown, or having children.

Making a will need not be expensive. Most solicitors and STEP members charge a reasonable fee for a straightforward will.

Homemade wills should be treated with caution and should only be used in the most straightforward of circumstances. Some homemade wills can be disastrous, for example, people omit to cover the position if the main beneficiary does not survive; or refer to assets that are not owned on death.

Instead, have your will drafted by a properly qualified professional – in particular look to a member of STEP (visit www.step.org/online-directory). Members are specialists in this field and can give expert advice.
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 ‘What is a trust?’, ‘What to do when someone dies’ and ‘Why make an Enduring Power of Attorney?’, 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

This booklet was revised and updated in May 2014 by Katie Graves TEP, and assumes Hong Kong law is applicable.

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