



Will, Probate and Enduring Powers of Attorney

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What is a Will?

It is a legal document which names the people (i.e. your executor(s) and beneficiary(ies)) who will administer, distribute and receive your property after your death, according to your wishes.

What can I do by making a Will?

In addition to giving your money and other property to your loved ones, you can:

- specify your desired funeral service
- name a guardian to care for your children under the age of 18
- state how to pay your debts and expenses
- make donations to charities.

Whether my Will is legally valid?

For a Will to be legally valid, you must

- reach the age of 18 or above (or married under 18)
- have made the Will voluntarily
- be of sound mind when making the Will.

Furthermore, the Will

- should be signed by you
- should be signed in the presence of 2 witnesses who are aged 18 or above. The witnesses and their spouses should not be beneficiaries under the Will.
- should also be signed by your 2 witnesses in your presence
- should be properly dated
- should include the identity card numbers of the testator, executor(s) and beneficiary(ies)

When do I need to update my Will?

As a Will does not take effect until the death of the maker, you can change it any time as long as you have the mental capacity to do so. You may consider reviewing your Will regularly, in particular when there are changes of the circumstances which may relate to the Will, e.g.,

- change of marital status of the maker or a beneficiary; a Will is revoked by the maker's marriage
- birth of a child by the maker
- birth or death of a beneficiary
- if an executor named in the Will dies

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It should not be regarded as legal advice for any individual cases. If you have any queries, please consult a solicitor.*

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THE LAW SOCIETY OF HONG KONG

3/F., Wing On House, 71 Des Voeux Road, Central, Hong Kong

Telephone: (852) 2846 0500

Facsimile: (852) 2845 0387

E-mail: sg@hklawsoc.org.hk

Website: <http://www.hklawsoc.org.hk>



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What if I die without leaving a Will?

If you die without leaving a Will, under the law of intestacy in Hong Kong, your spouse, children (or in some cases, your parents, siblings or relatives) will inherit your property in specified proportions under the law of intestacy in Hong Kong.

If you have no relative who could inherit your property, the Government will be entitled to receive all your property.

How to apply for a Grant of Representation?

When a person dies, there may be money in the deceased's bank accounts. There may also be company shares, real estate and other assets, etc. left under the deceased's name. Whether or not the deceased has made a Will, generally a Grant of Representation will have to be obtained from the Probate Registry of the High Court of the Hong Kong Special Administrative Region before any of the deceased's assets in Hong Kong can be dealt with. A small estate wholly made up of money and not exceeding \$50,000 may be dealt with through the Home Affairs Department (i.e. its Estate Beneficiaries Support Services).

A Grant of Representation is the evidence of a person's right to deal with the estate of the deceased.

You can visit the Probate Registry's website (https://www.judiciary.hk/en/court_services_facilities/probate.html#1) for more information on how to apply for a Grant of Representation. If you are not familiar with the procedures for the application for the Grant, such as preparation and filing of the necessary papers, you are advised to engage a solicitor to assist you in the application for the Grant.

Cross-border probate matters

On some occasions, questions may arise as to what law is applicable for the administration and succession of estate. For example, a deceased might have property in the Mainland, or a deceased, who is not a Hong Kong resident, leaves property in Hong Kong. Some solicitors in Hong Kong (e.g. China-appointed Attesting Officers) are familiar with the laws and practices of probate in the Mainland. They may be able to offer you information and services with respect to cross-border probate matters.

Enduring Powers of Attorney

Hong Kong introduced the law of enduring powers of attorney ("EPA") in 1997. This allows a person, while he/she is mentally capable, to confer power on one or more person(s) to deal with his/her property and financial affairs even if he/she subsequently becomes mentally incapacitated. A medical practitioner has to certify that a person has sufficient mental capacity when he/she makes an EPA. The EPA has to be witnessed by that medical practitioner and a practising solicitor. If you want to understand more about EPA, please visit the Department of Justice's website (<https://www.doj.gov.hk/eng/epa/>).

Why do you need a solicitor?

Although the EPA law specifies the role of a practising solicitor in an EPA, a person is not legally required to engage a solicitor to draft a Will or obtain a Grant of Representation. However, since these are all very important legal documents, it is therefore advisable to seek professional help. Timely advice by a solicitor may help to avoid future challenges as to the validity of a Will, a Grant and an EPA. Your interests may be better protected and potential disputes among family members and beneficiaries may be minimized.

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