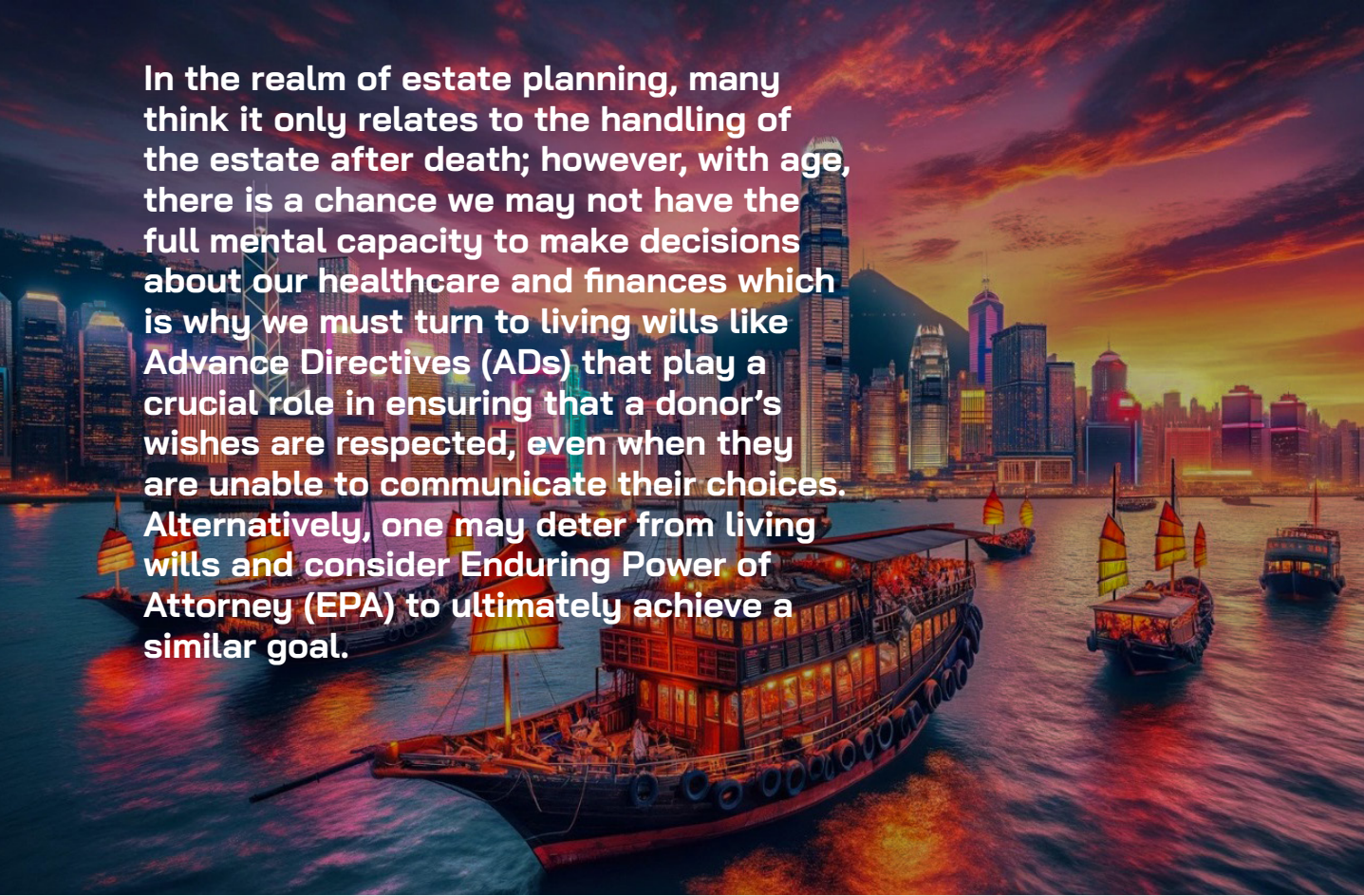


Living Wills in Hong Kong: Empowering Individuals through Enduring Power of Attorney and Advance Directives



In the realm of estate planning, many think it only relates to the handling of the estate after death; however, with age, there is a chance we may not have the full mental capacity to make decisions about our healthcare and finances which is why we must turn to living wills like Advance Directives (ADs) that play a crucial role in ensuring that a donor's wishes are respected, even when they are unable to communicate their choices. Alternatively, one may deter from living wills and consider Enduring Power of Attorney (EPA) to ultimately achieve a similar goal.

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In Hong Kong, the use of EPAs and ADs are some of the key estate planning tools to ultimately provide donors with the means to pass control to others to handle their financial matters and reflect the donor's healthcare preferences and maintain control over their medical treatment, respectively. By carefully considering the use of these forms of estate planning, you and your families will have very little to worry about in the event you become incapacitated.

Enduring Power of Attorney

Before reaching a stage of mental incapacity, a donor may appoint an EPA as a means to handle their finances if and when they are deemed mentally unfit. This ensures your financial decisions are taken care of in accordance with the law and is being executed by a trusted attorney.

The Enduring Powers of Attorney Ordinance (Cap 501) prescribes the responsibilities, obligations, and duties an EPA must fulfil when appointed. Ultimately, the attorney has the responsibility to act in the best interests of the donor, adhering to the instructions and preferences outlined in the EPA. This legal arrangement provides a trusted representative who can make decisions regarding medical treatment, living arrangements, and other important matters.

Understanding Living Wills (ADs)

A living will, also known as ADs, is a legal document which outlines the donor's healthcare and medical treatment preferences, typically to instruct medical practitioners what treatment they should use on the donor in the event of a medical emergency. In Hong Kong, ADs can be used to express preferences regarding life-sustaining treatments, resuscitation, organ donation, and other medical interventions. These directives serve as guidance for healthcare professionals, ensuring that treatment aligns with the individual's wishes, even if they are incapacitated.

However, the governance of ADs in Hong Kong is seen as a grey area as there is no legislation prescribing details of its enforceability. Medical practitioners may not abide by the directives especially in circumstances where a decision must be made immediately given



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their duty to act to preserve the life of their patients to the best of their ability. To bridge this gap, the government is looking to propose the reform in this area as a mean to ensure medical practitioners, patients, and EPAs are aligned with the primary objective to act and serve the patient, lawfully, and in their best interest.

Purpose of Living Wills

Living wills serve several important purposes. Firstly, they provide individuals with autonomy and control over their healthcare decisions, even when they are unable to communicate their wishes. By documenting their preferences in advance, individuals can ensure that their medical treatment aligns with their personal values, beliefs, and quality of life considerations.

Living wills also offer peace of mind to both individuals and their families. They alleviate the burden of decision-making during emotionally challenging times, reducing the risk of family disputes and providing clarity for healthcare professionals.

How are Living Wills and EPAs created?

Before creating a living will or EPA, the donor must have their mental capacity determined by a medical practitioner to ensure they are mentally fit to proceed.

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Both documents should be prepared by a solicitor to ensure they are tightly drafted, and all procedural requirements are followed. The donor is required to be honest and open in detailing their wishes, which is understandably difficult, but a crucial step to ensuring all wishes are incorporated.

Once approved by the donor, the signing of the EPA must be witnessed by someone else who is not the intended attorney, the attorney's spouse, or a person related by blood or marriage to the donor or the attorney. The EPA is in effect by the date specified in the instrument or when the donor is deemed mentally incapacitated.

Similarly, to the living will, the first witness to the AD must be a medical practitioner who has not treated the donor previously; secondly, they must be above 18 years of age, and not a beneficiary to a will, policy of insurance, and/or any other instrument made by the donor or on behalf of the maker of the directive (the solicitor which drafted the AD).

Considerations for creating Living Wills in Hong Kong

When creating living wills in Hong Kong, individuals should consider the following:

1. It is advisable to consult a legal professional who specialises in estate planning and healthcare law to ensure the living will is legally binding and complies with Hong Kong's regulations.

2. Discuss your intentions and the contents of your living will with your loved ones. Open communication can help ensure that your wishes are understood and respected.

3. Living wills should be periodically reviewed and updated to reflect any changes in personal circumstances, medical conditions, or treatment options. Regularly revisiting and revising the documents is essential to ensure their relevance and accuracy.

4. Hong Kong is a diverse society with various cultural and religious beliefs. Individuals should consider how their cultural or religious practices may influence their healthcare decisions and clearly articulate their preferences accordingly.

Living wills and EPAs provide donors in Hong Kong with the opportunity to maintain control over their healthcare decisions and ensure their financial matters are taken care of if they are unable to communicate their choices. By creating these legal documents, donors can ensure that their treatment preferences align with their values and beliefs. It is essential to seek legal advice and communicate openly with loved ones to ensure that living wills and EPAs accurately reflect one's personal wishes.

Once Hong Kong takes the steps forward to entrench living wills, individuals will feel more empowered to make informed decisions about their healthcare, promoting autonomy and providing peace of mind for themselves and their families. ■

