

# Enduring Power of Attorney for your reverse mortgage loan or policy reverse mortgage loan

## Introduction

A reverse mortgage loan or a policy reverse mortgage loan is a life-time loan arrangement which provides you with an additional financial planning option to improve your quality of life. As we get older, we will gradually experience varying degrees of deterioration in physical strength and cognitive ability. To avoid any interruption to your loan due to mental incapacity, it may be advisable to consider taking certain precautionary measures so that you can enjoy peace of mind and need not worry about your financial affairs.

## Enduring Power of Attorney

One of the options which you may consider is to procure an Enduring Power of Attorney (“EPA”) under the Enduring Powers of Attorney Ordinance (Cap.501 of the Laws of Hong Kong). An EPA operates like a general power of attorney in that you, as the donor, may appoint someone, as your attorney, to handle your financial affairs, including your reverse mortgage loan or policy reverse mortgage loan. However, an EPA does not replace a will and does not affect the application of intestacy rules if you do not have a will.

## Benefits of an EPA

An EPA brings you the following benefits when you become mentally incapable:

- **Ongoing management of your reverse mortgage loan or policy reverse mortgage loan:** your attorney will be able to make any necessary declaration for you to avoid any potential interruption to your loan. Your

attorney can also apply for lump-sum payout or change of payment term if necessary.

- **Avoidance of potentially complicated legal procedures:** in the absence of an EPA, for those taking care of you to manage your financial affairs, they may need to apply for a High Court Order under Part II of the Mental Health Ordinance (Cap.136 of the Laws of Hong Kong), and such application could be costly and time consuming.
- **Greater certainty in the management of your financial affairs:** with the person you trust to act as your attorney, you feel more at ease since your assets will not be left unattended, and you can rely on your attorney to handle your financial affairs in accordance with the requirements set out in your EPA.

## Three steps to arrange for an EPA

**Step 1** Consult your solicitor for preparation of the EPA.



**Step 2** Sign your EPA in front of a doctor (such as your family doctor) who will also sign the “certificate by registered medical practitioner” section in the EPA.



**Step 3** Sign your EPA, either at the same time as Step 2 or within 28 days of Step 2, in front of your solicitor who will also sign the “certificate by solicitor” section in the EPA. Finally, your EPA must be signed by your attorney in the presence of a witness.

You may contact your solicitor and doctor for preparation of the EPA.

## Cost arrangement

If necessary, you may borrow a lump-sum payout under your reverse mortgage loan or policy reverse mortgage loan to pay for the relevant fees charged by the solicitor and doctor in connection with your EPA and other directly related expenses.

## Matters to be considered

You should carefully consider the following matters, and discuss with your solicitor, when you prepare for your EPA:

- **Person to be appointed as your attorney:** Obviously, you will appoint someone you trust to be your attorney. You may also appoint two or more persons as your attorneys to act either “jointly” or “jointly and severally”.
- **Commencement of your EPA:** Your EPA may take effect on (i) the date it is signed; (ii) a specified date; or (iii) the occurrence of a specified event. In normal circumstances, you would like your attorney to handle your financial affairs including your reverse mortgage loan or policy reverse mortgage loan for you only when you have become mentally incapable.

When your attorney has reasons to believe that you are or are becoming mentally incapable, he must bring the EPA to the Registrar of the High Court for registration before exercising any power under the EPA. You (and any other attorney, if any, not applying for the registration) will be notified of such registration, and you may also name up to two other persons in the EPA to receive notice of such registration.

Such requirement puts certain interested parties on alert of the registration of your EPA, who are given the opportunity to dispute such registration if appropriate.

Alternatively, you may apply for registration of the EPA while you are mentally sound. Once an EPA is registered, it is available for public inspection so that persons dealing with the attorney could monitor the scope of the attorney's authority.

- **Scope of your attorney's authority:** In addition to your reverse mortgage loan or policy reverse mortgage loan, you may also consider other financial affairs to be covered under the EPA, and the authority to be given to your attorney in relation to such financial affairs.

For the purpose of your reverse mortgage loan or policy reverse mortgage loan, you may consider authorising your attorney to handle all ongoing matters relating to such loan, such as:

1. making any declaration as required under the loan and giving other notice or confirmation;
2. applying for lump-sum payouts; and
3. changing of payment terms.

It is up to you to prescribe the scope of your attorney's authority. For instance, you may authorise your attorney to handle only the ongoing administration of your reverse mortgage loan or policy reverse mortgage loan, but not to terminate or make any other changes to it. You should specify the scope of your attorney's authority in sufficient details.

- **Duties and liabilities of your attorney:** Your attorney is required to sign on the EPA to acknowledge his fiduciary duty owed to you in exercising his powers honestly and with due diligence, keeping proper accounts and records, avoiding any conflict of interest and not comingling your property with his own property.
- **Potential challenge by interested party:** Other persons affected by your EPA may challenge its registration or the exercise of any power thereunder by your attorney, and they may even apply to the court to revoke or vary your EPA, or remove your attorney. Before preparing for your EPA, you may wish to discuss with your attorney, your family members and other persons who may be affected by your EPA to minimise any potential dispute in the future.

### Disclaimer

The information contained in this leaflet is for reference only, and you should seek independent legal advice if you would like to arrange for your EPA.

For more information about the EPA in general, please refer to the Enduring Powers of Attorney (General Information)" leaflet prepared by the Department of Justice at:  
[www.doj.gov.hk/eng/epa/pdf/EPA\\_leaflet.pdf](http://www.doj.gov.hk/eng/epa/pdf/EPA_leaflet.pdf)



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