

What is Advance Care Planning?

Advance Care Planning is the process of planning for your future health and personal care should you encounter situations in which you are, unfortunately, unable to make decisions for yourself on how you wish to be cared for.

This article seeks to highlight the importance of Advance Care Planning and suggests how you may get started today.

Why is Advance Care Planning Important?

1. Life is unpredictable and we never know when we may be struck with a severe illness or meet with an accident. While you may find it uncomfortable to talk about Advance Care Planning, such conversations are important to inform your loved ones on how you wish to be taken care of in the event the unfortunate happens. Very often, you and your loved ones may hold onto different values and have a different perspective on how you ought to be cared for. Advance Care Planning allows for such conversations to take place, giving your loved ones a peace of mind and the confidence to say that the decisions they may make in the future are decisions that you would have wanted for yourself. This saves them from potential conflicts between each other, such as conflicts on who bears the responsibility on making decisions for you and whose decision is truly the best for you.
2. There are two legal documents which you can create as part of your Advance Care Planning journey. These are the Lasting Power of Attorney (“LPA”) and the Advance Medical Directive (“AMD”).

Lasting Power of Attorney

3. An LPA is a legal document which allows you (the Donor) to appoint someone (the Donee) to make decisions for your personal welfare and/or property and affairs in the event you lose mental capacity and the ability to make decisions yourself.
4. Before making an LPA, you would need to decide on someone you trust to make such decisions in your best interests. A Donee must be at least 21 years old¹ and must not be an undischarged bankrupt (if he/she is appointed in relation to your property and affairs)². You may appoint up to two Donees and one replacement Donee.
5. When making an LPA, you may use either Form 1 or Form 2. Form 1 is a prescribed form that is straightforward in nature with few limitations under the Mental Capacity Act. Wide powers are granted to your Donee(s) to make decisions in your best interests for both your personal welfare and property and affairs. Form 2 is considered a ‘blank canvas’, which allows you to grant more specific powers or impose more specific restrictions on your Donee(s). You may also appoint a trust company as your Donee under Form 2.

¹ Section 12(1)(a)(i) and section 12(1)(b)(i) of the Mental Capacity Act (Cap 177A) (“MCA”)

² Section 12(2) of the MCA

- After completing the form, you would need to find an LPA certificate issuer³, who will certify that you understand the contents of the LPA and did not make the LPA under pressure or fraud. When this is confirmed by the certificate issuer and he/she fills up the relevant portions of the form, you may then proceed to submit your LPA application to the Office of the Public Guardian for registration⁴.

Advance Medical Directive

- An AMD is a legal document certified by a doctor for your intention to not use any extraordinary life-sustaining treatment to prolong your life, in the event that you become terminally ill and unconscious where death is imminent⁵.
- To make an AMD, you have to be at least 21 years old and have the mental capacity to make the AMD⁶. The AMD has to be signed by two witnesses – a doctor and another individual who is 21 years old and above⁷. The doctor has a responsibility to confirm that you are making the AMD voluntarily, you have mental capacity and that you understand the nature and implications of making an AMD⁸. Both witnesses must not have any vested interest in the death of the person making the AMD (for example, the witness shall not be a beneficiary under the person’s Will)⁹. Finally, the AMD must be registered with the Registrar of Advance Medical Directives, Ministry of Health Singapore.

Conclusion

- Advance Care Planning may be an uncomfortable topic to consider as everyone wishes to live a full and meaningful life. However, life is unpredictable and making decisions early on how you wish to be taken care of would provide a peace of mind to both yourself and your loved ones should the unfortunate happen one day. If you are uncertain on how to make an LPA and an AMD, please feel free to contact us and we would be more than happy to assist you.

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³ A certificate issuer must be an accredited medical practitioner, a practicing lawyer or a registered psychiatrist.

⁴ For Singaporean Citizens, the fee for Form 1 applications are waived up till 31 August 2020. This means that you would only need to pay for the professional fees charged by the certificate issuer of the LPA. For the full list of registration fees, visit:

<https://www.publicguardian.gov.sg/opg/Lists/Media%20Centre/Attachments/54/LPA%20Application%20Fees%20Waived%20for%20Two%20More%20Years.pdf>

⁵ For more detailed definitions on “extraordinary life-sustaining treatment” and “terminal illness”, please refer to section 2 of the Advance Medical Directive Act (Cap 4A) (“AMDA”)

⁶ Section 3(1) of the AMDA

⁷ Section 3(2) of the AMDA

⁸ Section 4 of the AMDA

⁹ Section 3(3) of the AMDA