

# ***PREPARATION OF WILLS***

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# *AREAS COVERED*

- *Why make your Will*
- *When should you make your Will*
- *How to go about making your Will*
- *Do you need to register your Will*
- *What if you change your mind*

# *WHY MAKE YOUR WILL*

## *➤ Problems created in the absence of a Will*

- Property devolves according to legal rules of Intestate succession. Individual loses his prerogative of deciding who is to inherit his/her property.
- Legal rules relating to Intestate succession can be complicated and division of the estate on their basis might not be straightforward or satisfactory. Resulting confusion could culminate in time consuming and expensive litigation.

# ***WHY MAKE YOUR WILL***

## *➤ Problems created in the absence of a Will*

- Court intervention may be required to distribute the estate.
- In this case the heirs would have to apply for a Letter of Administration or Succession Certificate as the case may be. These are granted by the courts after following certain procedures.
- Properties might be locked up for several years while the above legal formalities are being complied with.

# *WHY MAKE YOUR WILL*

## *➤ Advantages of making a Will*

- The Testator can dispose of his property as he sees fit.
- Disposition of the property can take place in a more orderly fashion and will result in lesser confusion.
- Helps focus on equitable distribution of the wealth accumulated during a lifetime.

# *WHEN SHOULD YOU MAKE YOUR WILL*

- The best time to make your will is now.
- Misconception that will needs to be made only near the time of death.
- A will dated too close to the death of the person is apt to raise suspicions. A will made at an earlier stage would reduce the chance of suspicions about its genuineness.

## *WHEN SHOULD YOU MAKE YOUR WILL*

- Persons capable of Making Will – “Section 59. Persons capable of making Wills– Every person of sound mind not being a minor may dispose of his property by Will.
- Explanation 1 – A married woman may dispose by will of any property which she could alienate by her own act during her life.
- Explanation 2 – Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

## *WHEN SHOULD YOU MAKE YOUR WILL*

- Explanation 3 – A person who is ordinarily insane may make a Will during interval in which he is of sound mind.
- Explanation 4 – No person can make a Will while he, is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.”



## *WHEN SHOULD YOU MAKE YOUR WILL*

Execution of the Will – According to section 63 the Will is to be executed according to the following rules.

The testator shall sign or fix his mark to the Will or it shall be signed by some other person in his presence as per his direction.

Signature or mark of the testator or of such other person shall be so placed that it would appear that it was intended to give effect to the writing as a Will.

## *WHEN SHOULD YOU MAKE YOUR WILL*

- The Will shall be attested by two or more witnesses each of whom has seen the testator sign or affixed his mark to the Will or such other person, in the presence and by the direction of the testator.
- Each such witness shall sign the will in the presence of testator.
- However, it shall not be necessary that more than one witness be present at the same time and there will be no particular form of attestation

# *HOW TO GO ABOUT MAKING YOUR WILL*

## ➤ *Important Legal Considerations*

- Right to make testamentary disposition of ones' assets is restricted by relevant provisions of personal law and the same must be taken into account.
- Applicable laws include Indian Succession Act, 1925, Hindu Succession Act,1956, Hindu Personal Law and Muslim personal laws.
- The Testator must be a major and must be of sound mind.

# *HOW TO GO ABOUT MAKING YOUR WILL*

*Generally applicable rules under the Indian Succession Act ,  
1925*

- Make a list of all the moveable and immoveable properties.
- Compose a list of all the legatees and the manner in which the estate would be divided.
- Collect relevant details in relation to the person who is to execute your will. Confirm that he/she is willing to act as an executor.
- Name and description of the testator is to be given correctly at the commencement of the will.
- Should be witnessed by two persons who are not beneficiaries. Bequest to witnesses void, though will valid.

# *HOW TO GO ABOUT MAKING YOUR WILL*

## *Generally applicable rules under the Indian Succession Act , 1925*

- In case the testator is suffering from serious physical or mental infirmity it is advisable that one of the attesting witnesses be a Doctor. Otherwise any respected member of society can act as an attesting witness.
- Generally, the will must be signed by the testator in the presence of the attesting witnesses who have seen him sign the will and the attesting witnesses should also sign the will in the presence of the testator.
- The testator need not disclose the nature or contents of the wills to the attesting witness.

## *POINTS TO KEEP IN MIND WHILE DRAFTING YOUR WILL.*

- It should be precise and clear.
- Seek professional assistance while drafting your will.
- It is useful to have a registered will.

## ***DO YOU NEED TO REGISTER YOUR WILL***

- A will is not compulsorily registrable and non registration does not affect its validity.
  
- However it would be useful to register a will for the following reasons
  - A registered will cannot be tampered with, destroyed, mutilated or stolen.
  - Is kept in the safe custody of the Registrar.
  - Is confidential and not accessible.
  - Is easier to establish in courts of law.

# *DO YOU NEED TO REGISTER YOUR WILL*

- The registration can be performed at the office of the Registrar/Sub-registrar.
- The testator has to be present in person at the Registrars office and should be accompanied by two witnesses.
- In exceptional circumstances the registration can also be effected at a persons' residence.



# *WHAT IF YOU CHANGE YOUR MIND – AMENDING YOUR WILL*

## *A will may be amended by*

- By making a codicil, which may be endorsed on the old will, or by a separate document.
- Destroying the old will or revoking the earlier will (if it was registered) and executing a fresh will.
- Seeking a fresh registration.
- Wills can be amended to override the earlier bequest or add to the original bequest.
- Any amendments should be clearly worded to ensure that they override or add to the original bequests, as may be the case.

*Writing a will is the most selfless act you will ever do in your life – you can't leave anything to yourself!*

*I Hope that many here are sufficiently enthused to write their wills.*

**THANK YOU**