

WILLS AND LEGACIES

HOW TO PREPARE YOUR WILL

What is a will?

- A will is a highly confidential document, the aim of which is to provide the person with a legal platform to distribute his/her assets after his/her demise.
- A will can be made on stamp paper, and it is advisable to get it registered at the office of the sub-registrar.
- If a person passes away without leaving behind a will, then his/her assets (both movable and immovable) will be divided among his/her legal heirs, as per the provisions mentioned in the Hindu Succession Act. Those who do not fall under the legal obligations of the Hindu Succession Act are governed by their personal law or by the Indian Succession Act.
- The distribution of assets, as mentioned in the will, cannot be challenged by anyone.
- However, it should be noted that a will is a revocable document, and can be changed by the 'testator' whenever he/she desires.
- In order to ensure that a will becomes a valid document, it has to be signed by at least 2 witnesses.
- It is advisable for all people, above the age of 45, to prepare a will.

Advantages of making a will:

- The biggest advantage of preparing a will is that it makes the distribution of both movable and immovable property much easier.
- Through a will, it is also possible to reward a person/s (whether a relative or a non-relative), for his/her sincerity, loyalty and affection.
- The preparation of a will also provide the inheritor/s with huge tax planning advantages.

Drafting a will

The following steps should be followed while preparing a will-

- Make a list of all the movable and immovable assets owned.
- Category A consists of assets such as residential property, commercial property, machinery, antiques and other expensive items.
- Category B consists of cars, shares, securities and so on.
- Category C consists of items such as television sets, gadgets, and jewellery and so on.
- The next step is to make a list of all the prospective heirs.
- The 3rd step in the process is to compile a final list of all the heirs and the assets to be handed down to them.
- It must be noted that while preparing a will, the testator should also mention a list of the various liabilities that exist as on the date of the execution of the will. He/she must also prepare and mention a plan of action to deal with the issue of discharging these liabilities.
- A will also requires the appointment of an executor to execute the will.
- An important point to be remembered is that only self-acquired property can be willed away, not ancestral property.

Registration of a will

- The registration of a will isn't necessary.
- If, however, the testator feels the need to register the will, he/she can do so at the office of the sub-registrar (at a nominal cost).
- For the purpose of registration of the will, in addition to the original copy, a duplicate copy has to be submitted too, which has to be signed by the person making the will.
- Two witnesses are required to authenticate the validity of the will.
- The testator should also provide documentary proof in regards to his/her identification (passport or voter ID card is sufficient).
- Once all the above mentioned steps have been followed, after 3 weeks or so, the original will, duly registered, will be returned.
- A will can also be registered with a notary public (generally appointed by the government).

The role of the executor:

- An executor has the most vital role to play in the final execution of the will.
- It is the executor who is charged with the duty of executing the wishes and desires of the person who nominated him/her as the executor of the will.
- The major function of the executor is to collect all the assets and debts of the deceased person, pay off all the debts and finally, distribute the assets of the estate of the deceased person, according to the will.
- The executor of the will generally does not receive any form of remuneration for carrying out his/her duties.
- The executor of the will is advised to prepare a statement about the performance of his/her various duties in connection with the will.

The role of a will in tax savings:

- The creation of a will provides various advantages that can be secured by the members of the family of the taxpayer.
- Transfer of assets without any consideration can be made by a will to one's wife or daughter-in-law, without attracting the clubbing provisions of Section 64(I) of the IT Act.
- Another important tax advantage of a will is to secure an annual charge on property, particularly for the benefit of one's daughters.
- One of the important means of tax planning to be adopted through the creation of a will is the creation of a Hindu Undivided Family.
- Under the provisions of Section 64(I), if a person bequeaths an asset to his minor child/grandchild, then the income accruing to the minor child/grandchild will be clubbed with the income of the mother/father. Hence, a will can be adopted as a proper instrument for the transfer of property by way of bequest, also aiding in tax-saving.
- Sections 64(I) (vi) and (viii) make provisions for the transfer in favour of the daughter-in-law, either directly or for her benefit. A bequest can be made in favour of the daughter-in-law, so as to confer an absolute title to her and make her a taxable entity (if she already isn't one), after the testators demise.
- Through the creation of a will, a discretionary trust can be created, which would be taxed at normal rates. Such a trust is normally liable to be taxed at the maximum marginal rate of tax as per Section 164(I) of the Income Tax Act, 1961. However, certain types of exemptions to this provision are enlisted in the first provision of Section 164(I).

- A considerable amount of tax saving can also be achieved through the judicious drafting of a will.

Nomination and will:

- General assumption is that a nominee for NSC, LIC policies, fixed deposits, Mutual funds, Provident Fund and Savings bank accounts are the legal heirs to the proceeds for which he or she was nominated.
- The nomination only indicates the person who is authorised to receive the amount on payment.
- The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.
- Hence, one needs to have a WILL in place in order to ensure that the person of your choice receive the amount meaning thereby the person as nominee and receiver in the WILL are same person.

Note: Please do not part with your original /photocopies of WILL and any other property documents in any circumstances because hostile person can destroy or make copies of same. The original documents should be kept in locker and only photo copies with you.