

How to prepare a Will- CA Mohit Bhuteria
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Section 2(h) of the India Succession Act, 1925 defines Will as meaning "the legal declaration of the intention of the testator with respect to his property , which he desires to be carried into effect after his death.

A Will is a document written by a living person stating his/her wishes to be executed after his/her death.

However, this is a complex task since the person writing the Will would not be living to explain the meaning of his/her intentions. To add to the complexity, between the time the person makes a Will and his/her demise, the assets, relationships, etc., also typically undergo a change and therefore the Will also has to withstand the test of time.

Primarily, a Will states what and how the writer's assets are to be distributed after discharging liabilities of the writer. It is a legal declaration of his intention.

A person who writes a Will is called a testator. Though a Will can be drafted in a simple manner by a person himself/herself even when sitting at home, it can be very difficult to prove in court if the Will is contested by any person post the demise of the testator, in a situation where the Will is ambiguous. This is because even a simple Will can have hidden complexities.

History shows that contests to a Will can be a gruelling experience for the heirs lasting over decades, as often a resolution between family members is not achievable due to greed, ego and high-handed attitude of the parties contesting the Will.

Every person of sound mind not being a minor may dispose of his property by Will. A married woman may dispose by Will any property which she could alienate by her own act during her life. Person who are deaf or blind are not thereby incapacitated for making a Will if they are

able to know what they do by it. A person who is ordinarily insane may make a will during an interval while he is of sound mind. No person can make a Will while he is in such a state of mind, whether arising from intoxication or illness or from any other cause, that he does not know what is he doing.

List of assets and liabilities

The testator should make a list of his assets and liabilities .

Liabilities subtractable from asset value

It is also important to bear in mind that the liabilities of the person would be adjusted against the overall estate (assets) of the person thereby reducing it to some extent. . Consequently, the testator should keep this in mind while distributing his/her assets in the will.

Add heirs as joint holders/nominees

In respect of moveable properties, it may be wise to include the heir to be added as a joint account holder / nominee such that transmission/transfer of the asset post your demise is a smoother process.

With respect to immovable properties, it would be wise to leave specific properties to a particular individual, rather than leaving it to two or more persons jointly to prevent disputes among heirs over the management of such properties. If it is not possible to segregate individual properties to individual heirs, then it can be provided in the Will as to how the heirs can distribute the properties among themselves. For example one way would be to state in the Will that one party can buy out the other heir at market value or at a pre-fixed price. , It must be noted that a nomination makes the nominee a trustee of the property (post the owner's demise) and not the legal heir unless the nominee's name is specified in the Will as the heir to that property.

How to choose an executor

Second most important would be to identify person(s) who is/are close confidante(s), who would be willing to act as executor(s) of the Will. An executor of a Will is entrusted with the task of collecting the assets of a person, discharging the liabilities from such assets and thereafter distributing the same as per the Will. . This process is called administration of the Will. Ideally, the executor chosen should be a trusted person and also younger than the testator to reduce the chances of the executor dying before the testator. The executor dying before the testator would increase complexities by making it necessary for the heirs to appoint another administrator.

Witnesses to the Will

Next, the Will maker needs to identify two individuals who are not receiving any part of the assets under the Will but who are willing to testify that they saw the testator sign the will in front of them. They shall sign in presence of the testator. They may also have to confirm that the person was of a sound mind and wrote the will out of his/her own free will. These persons are called attesting witnesses and typically, lawyers, doctors, CAs are chosen to do the same. It is important to include the name, address and telephone number of the person in the Will itself so that the heirs have no difficulty in tracing the attesting witnesses. If the testator is of an advanced age, a fitness certificate from a registered doctor can also be included and attached to the Will. It is advised that Will should be signed on all pages by the testator. Attestation is required to render available proof that there has been a compliance with the Statutory requisites of the execution of a Will and that the signed instrument offered for probate is the exact paper which the testator signed and not one fraudulently substituted.

Registration and videography

While it is not mandatory to register a Will, in case the testator expects that the heirs are likely to challenge the Will, it may be a good idea to do so. The testator may also video-graph the Will where the testator

himself reads out the Will before a camera. All these acts add towards reducing the challenge to the Will and making it stronger.

Revocation of Will

A will may be revoked or altered by the maker of it at any time . A Will can simply be destroyed the maker by tearing into pieces,

Where to keep the Will

The testator should keep the will at a place where it can be easily found in the event of his death with a xerox copy with his trusted advisors.

Registration

One can register the Will, but the same is not mandatory.

A typical format of a Will is as follows:

WILL

This is the last Will and testament of me, Mr _____, son of _____ at present residing at _____

I, hereby revoke all my previous Will, Codicils and testamentary disposition, if any, and declare this to be my last Will and testament.

I, _____, hereby appoint _____ at present residing at _____ as the Sole Executor of my this Will. I direct my said Executor to take charge of all my assets, effects, properties, movable and immovable which I may die possessed of even before obtaining the probate in accordance with my wishes as stated herein, after making payment of amount/amounts on account of funeral expenses and customary rights. The Executor may reimburse himself from my Estate reasonable expenses incurred towards the completion of the execution and probate formalities. The Executor shall be empowered to appoint and consult with any professional services for better undertaking his / her responsibilities in accordance _____ with _____ my _____ wishes.

I hereby specifically make it clear that my Executor shall not be personally responsible or be held responsible for any act or omission that may occur in administering my Estate.

I, hereby state that I have already given or have gifted and/or transferred whatever assets I so wished to so gift/transfer in favour of such of my relatives whom I so desired and for the avoidance of any doubt it is clarified that I am not desirous of bequeathing anything in favour of any other person/party in respect of he/she is related to me or not except as otherwise stated herein.

I own and possess certain properties and assets on the date of this Will which have been listed in Schedule A which form part of the Estate. The assets listed in Schedule A are not an exhaustive list of all assets owned by me and that the mention of the aforesaid assets is merely to give the

Executor an indication and a direction to proceed further.

I, hereby give, devise and bequeath absolutely and forever to all my remaining assets and property, whether movable or immovable, tangible or intangible, including but not limited to monies lying in Current Account, Fixed Deposit Account, Savings Account, Life Insurance Policies, Provident Fund, Shares, Debentures, Mutual Fund etc. and all other valuable properties including my shares, rights, titles, interest in all partnership firm and trust and properties in which I have any manner of right, title or interest and all and whatever other assets and properties I, shall or may die possessed off.

I am making this Will and declaring this to be last Will and testament made of my own free will and presence in full consciousness and in good and sound mental and physical health and the same in binding on all.

In witness thereof I, _____ set and subscribe my hand and signature on this the ____ day of _____, 2021 and declare this to be my last Will.

Signed and executed by the said _____ being the testator above named as and for his last Will and testament in our joint presence who at his request and in his presence and in the presence of each other all being present at the same time have here unto subscribe our name and address as attesting witness.

