

Importance of WILL

There is an old saying: Where there's a Will, there's a way. In the absence of a properly-executed Will, however, the ways ahead may sometimes be not only too many, but also too complicated.

What is a will?

It is a legal document that names individual/individuals who would receive the property and possessions of a person after his/her death. The document can be revoked, modified or substituted by the person executing it at any point during his/her lifetime.

The Will is a testamentary document that comes into effect after the death of the testator. A succession, after death of a person, under will is called testamentary succession and a succession without the Will is called intestate succession.

A will can be made by self or through a lawyer or banker. A will written by self is considered legal only if it abides by the state law.

For a will to be recognized as a legal document, it should be signed by the testator in the presence of two witnesses. The name and signature of the two witnesses should also be attached to the will.

Terms Used in Wills

Administrator : A person appointed by a competent Authority to administer the estate of the deceased person when there is no executor

Bequest/Legacy : It is a testamentary gift of property

Codicil : An instrument made in relation to a Will and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will.

Executor/Executrix : A person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided.

Legatee : Beneficiary of property under a Will. There is no specification about who can be a Legatee.

Probate : The Copy of the Will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator

Testator : A person who executes a Will

Intestate : A person who dies without a will is intestate

Issue : Issue is another word for your direct descendants such as children and grandchildren.

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Importance of Planning a will :

Planning of will is important because the document always acts as an inventory of the assets left behind by the deceased. A clear and well-written Will also help in avoiding any bickering among the natural heirs. And, if a person wants to distribute his/her wealth to anyone other than the natural heirs, the Will assumes paramount importance.

Manage possessions :

A well designed will not only help in managing your assets during your lifetime but also protect your estate from any future contingencies.

Distribute possessions :

A will is primarily made in order to distribute a testator's priced possessions amongst the people he wishes to. It ensures that your hard earned money does not become a reason of rift among your near and dear ones.

Assign Guardian :

A will is also designed to allocate a guardian to a minor or dependent who is the legal responsibility of the testator. The guardian will have to look after the dependents once the will comes into action.

Appoint of Power of Attorney :

A person can act as the power of attorney if the testator's will mentions so. He/she gets this power once the testator is not able to continue the administration of his assets in a sound manner.

Dos and Don'ts of will

It is very important for a will to be well written. In case of failure to comply to any of the prerequisites of a will, the will may be considered void in legal terms. Thus one has to take care of a few do's and don'ts which help the testator draw a well exhaustive document.

Dos of writing a will

Express your wishes clearly: While writing a will, do not leave any scope of misinterpretation. Quantify your assets clearly and state your wishes regarding each asset clearly. Make sure the will is written in basic fonts and legible. The language of the will should be crisp and understandable so that there is no room for any confusion or revolt.

Choose your witness wisely : Make sure to sign your will in the presence of 2 witnesses who will in turn sign on your will and pledge that the will made by you was made in full consciousness and sound mind. In order to keep the witnesses unbiased, make sure you choose them from the people who will not benefit from your will.

Trusted Executor : Assign a trusted executor for your will. In case of your death or inability to carry out operations, this executor will execute your wishes as stated in the will. A trusted executor will ensure that all the elements in the will are managed and distributed as per the wishes of the testator. An individual, lawyer or a bank can act as an executor in exchange of a nominal fee. It is better to appoint a lawyer/banker as an executor as they ensure unbiased execution of one's will.

Take care of your will : Once the will is made and signed, a major task that remains for a testator is to store his/her will carefully. A will should be kept at a place where it can be easily found by the executor only after the death of the testator. Also it should be properly guarded, so that it does not get misplaced or stolen.

Review your will : It is important to review one's will from time to time and make any required changes. There may be an addition or subtraction to one's possessions which needs to be incorporated in the will. Also in case of marriage or divorce, birth or death of beneficiaries, a will of the testator should be updated.



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Don'ts of writing a will

Prepare your will in haste : Writing a will is a serious job! It helps you secure the future of your near and dear ones. Do not prepare a will in haste. Never prepare your will when you are too happy or too hurt by your external circumstances. Keep an open mind while charting out your assets, beneficiaries and their stakes. Do not write a will under pressure. Take your time, think wisely and allocate your assets as well as responsibilities to the people who you think will best fulfill their responsibilities and take care of your hard earned money.

Using DIY kits : Today many websites provide you with ready DIY (Do It Yourself) kits. These kits provide a testator with a generic form, which he has to fill and print out the results which effectively becomes his will. These kits may fail to take into account laws of various state jurisdictions or may not be completely in line with what a testator has in mind. It is not one of the best tools to avoid estate tax. Also, these DIY kits are not competent for the complex Indian property as well as relationship structures.

In case there is no will made, an individual's property is managed by government administrators who execute the orders of the law. The government decides who the beneficiaries of the individual are and distribute the estate accordingly. Hence, it is important to chart out a will beforehand, assign an executor and save your family from the hassles of government distribution. So, go ahead, secure your loved ones and leave the execution on experts who have their best interest in the well-being of you and your dear ones.

Make an alternative version of will: In case a testator decides to discard his previous will and make a new version, make sure that the old will is properly destroyed. This is important so that the old version of the will is not misused by anyone. Also, people like to make a more impersonal alternate will for their family members. However, this practice is not advisable as it may create contradictions and confusions. In such situations, it sometimes takes years to successfully execute a testator's will making a lot of people unhappy.

Risk your children's future: It is best advisable to leave a share for your spouse as well as your children separately. Leaving everything to your spouse, may leave your children with nothing. In case of the spouse remarrying, your entire asset base may then pass on to the spouse's new family. It is also not mandatory that if your spouse does not remarry, all the assets in your spouse's name will go to your children after his/her death. Thus, it is advisable to leave a certain share of your assets for your childhood beforehand.