

# SHOULD I MAKE A WILL?



## **Inside this issue:**

SAMPLE FORMATS  
OF WILL

As regards the post-life financial and wealth planning, a well drafted and exhaustive Will is the only way to make sure that your savings and possessions are available for use by the people and for the benefit of causes that you care about. A Will is not merely a statement of personal wishes, but a clear description of how you want your assets to be treated after your death.

# PREFACE

## **WHY should you make a Will?**

You need a Will if you have positive net worth and when you have dependents.

## **WHAT does a Will do?**

A Will guides the distribution of your assets after your life.

## **WHEN is it important to make a Will?**

Whenever you have a wish for or against a legal heir as regards their automatic share in your property.

## **HOW to make a Will?**

To avoid conflict among your heirs, it is advisable to draft a Will with appropriate professional advice.

Please read on to find out the legal position and binding provisions governing the operation of Will and succession of property with and without the existence of Will, under various Indian laws.



# WHAT IS A WILL? WHY IS IT IMPORTANT?



A Will is a legal declaration by a person about the way he wants his property to be managed or distributed after his death.

It is important to make a will because if you do not make a will, and die without writing one, the law and courts will decide what happens to your assets. In other words, writing a will gives the power to divide your estate amongst your heirs (all or few or none of them) and any others, in your hands and not in the hands of the legal machinery of your country, when you die.

# ARE THERE ANY PRESCRIBED FORMATS?

Although Will is a legal document, but there is no prescribed format that it must take. For instance, you don't need to write a will on a Stamp Paper and it can be either typed or handwritten. However, a handwritten will is preferred as it is more difficult to refute. **Few sample formats of Will can be found [here](#).**

**Following are some components that it should have:**

- (a) Complete name and address
- (b) Exhaustive detail of all your assets.
- (c) Appointment of Executors of your will, alongwith their complete details, to carry out the wishes stated in the will.
- (d) Residuary Clause stating that anything not covered in the will shall be a gift to someone named.
- (e) Attestation Clause and signatures of the witnesses.
- (f) Will must be made in duplicate for keeping one copy with testator and another in a safe place.
- (g) Both copies must be signed and attested.

# WHY SHOULD YOU MAKE A WILL?

**Some benefits of making a Will are as follows:**

- (a) It helps in avoidance of family disputes later.
- (b) Any unsought heirs or fraudulent family members can be excluded from automatic inheritance.
- (c) Special consideration and beneficial share in the property can be given to some needy family member as per own desire which is otherwise not possible.
- (d) Making a Will is advantageous from Tax planning perspective.
- (e) Declaration of rights over one's property by way of Will allows inclusion of some non-family members.

## Can a Will be revoked?

Yes, a will can be revoked during the lifetime of a testator (Will writer) and the final one takes effect after a person's death.

# IMPACT OF A PERSON'S RELIGION/ FAITH

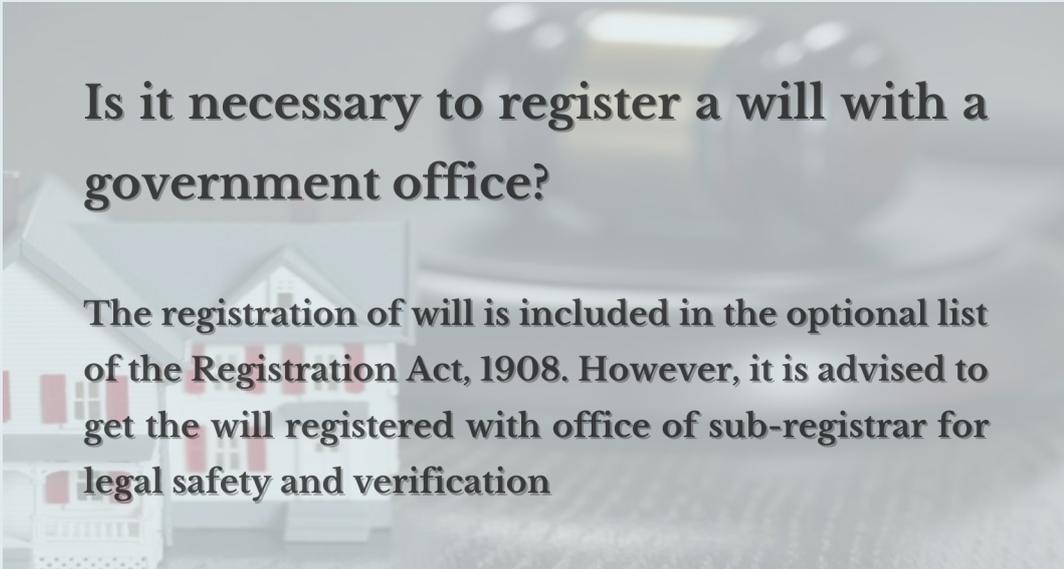
India is governed by different succession laws as per religion of the property owner to guide the property transfers after a person's death.

In absence of a will, Hindus (including Sikhs, Jains, Buddhists) and Muslims have their respective laws administering property succession. However, for the persons of different faiths than Hinduism and Mohammedan, the Indian Succession Act is applicable automatically.

In the presence of a will, successions are governed as per the Will and under supervision of the Indian Succession Act.

**What happens in case of death of a person who has NOT left a will to decide his estate succession plan?**

When a person holding the ownership of the property passes away without making any proper will, it is called Intestate Succession. Under such conditions, the general constitutional laws are applicable to deliver the property to the rightful person.



**Is it necessary to register a will with a government office?**

**The registration of will is included in the optional list of the Registration Act, 1908. However, it is advised to get the will registered with office of sub-registrar for legal safety and verification**

# **SUCCESSION PROVISIONS UNDER THE HINDU SUCCESSION ACT, 1956**

If a Hindu dies intestate i.e. without making a will for whole or residue of his property, then succession of his property will be governed by the **Hindu Succession Act, 1956**.

**Some provisions of Hindu Succession Act, 1956 are as follows:**

**In case of death of a Hindu male without writing a will**, his property shall be divided equally among his sons, daughters, widow and mother and include the specified heirs of predeceased sons or daughters.

Succession flow of property of an intestate Hindu male after his death can be categorised based upon whether that property is **separate or coparcenary**.

As per the Hindu Succession Act, 1956, any individual born in a Hindu Undivided Family (HUF) becomes a coparcener by birth. The separate property of an intestate deceased shall be divided completely among his legal heirs, however, the co-parcenary property shall be divided on survivorship basis whereas the legal heirs of the deceased will have divided right only on deceased's share of coparcenary (ancestral) property.

**Flow of succession of property of an intestate Hindu female after her death can be categorised as follows depending on the source of such property:**

## **(1) Self-acquired**

- (a) firstly, upon the sons and daughters and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

# SUCCESSION PROVISIONS UNDER THE HINDU SUCCESSION ACT, 1956

CONTD...

## **(1) Inherited from father**

- (a) Firstly, any son or daughter
- (b) Secondly, heirs of the father

## **(2) Inherited from husband or father-in law**

- (a) Firstly, any son or daughter
- (b) Secondly, heirs of the Husband

## Who can make a will?

### THE ELIGIBILITY CRITERION

A Will should be made by a natural person of major age (adult), having sound mind, free will and freedom from undue influence, fraud, coercion, intoxication etc. at the time of writing the will, who has knowledge of its contents, to be considered valid.

# SUCCESSION PROVISIONS UNDER OTHER FAITH LAWS

## Muslim Succession

Succession of property of a Mohammedan who dies intestate, is governed by The Muslim Personal Law (Shariat) Application Act, 1937

## Other Religions

For persons of other faiths/ religions, for example Christians, Parsis, Jews, Indian Succession Act, 1925 is applicable.

## Inter-faith marriages

Succession of property in case of inter faith marriages is governed under Special Marriage Act, 1954 read with the Indian Succession Act, 1925

*It is also pertinent to note that in case of intestate succession under the Indian Succession Act, 1925, the source and character of the property is not relevant as it recognises only blood relations through which the heirs are decided. It makes no difference between brothers and sisters of full blood, half blood and uterine blood whereas the Hindu Succession Act prefers full blood to half blood and half-blood to uterine blood.*

## **Scenario in case of death of a person who has left a will to decide his estate succession plan**

The succession of property of a person as per the Will made by him before his death is called **Testamentary succession**.

Testamentary succession is governed by the Indian Succession Act, 1925 whereas the distribution of property shall happen as per the will of the person made before his death.

# MISCELLANEOUS

- **Widow of a pre-deceased son** gets a share under the Hindu Succession Act but since the Indian Succession Act recognizes only the blood relations, the widow of a predeceased son does not inherit any property under the Indian Succession Act.
- **Difference of religion between the intestate and the claimant** is immaterial under the Indian Succession Act 1925 while the Hindu Succession Act provides that from a Hindu only a Hindu can inherit.

## **Closing remarks**

To summarise, a Will becomes a necessity if you are married, have kids, or have a lot of assets to benefit (read lure) your heirs. However, you may not need a will if you are young, single, childless, and broke.

However, whenever it is time for you to get a Will in place, it is important that appropriate legal guidance is sought and considerably thought is put into drafting a comprehensive Will because a will can help your family to avoid conflict when you die, and it is not something you should just give a casual try to.

# REFERENCES

## **Bare Acts:**

- The Indian Succession Act, 1925
- Hindu Succession Act, 1956
- The Muslim Personal Law (Shariat) Application Act, 1937
- Special Marriage Act, 1954
- Registration Act, 1908

## **Web references:**

- [www.oldagesolutions.org](http://www.oldagesolutions.org)
- [www.moneyunder30.com](http://www.moneyunder30.com)
- [www.investopedia.com](http://www.investopedia.com)



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