

# Creating a Robust Will & Testament

## Why should you have a will?

A smartly crafted will and testament greatly simplifies the inheritance process and ensures that the assets of the will maker (*testator*) devolve in line with their wishes. For the will to be effective, it should be legally enforceable, meaning that it should comply with some basic procedural requirements. Some of these include valid execution, registration, appointment of an executor, among others. If a person dies without making a will (*intestate*), their assets are distributed to their legal heirs in accordance with religious personal laws, which are different for Hindus, Muslims, and Christians. For this, the survivors of the testator must apply for a letter of administration before a court.

## The must haves

Since there is no specific format, a will can be drafted in any manner. It should be validly executed, i.e., the will should be signed by the testator in the presence of two witnesses. The witnesses should be independent. While anyone can be a witness, we recommend unrelated third parties – usually a physician and an advocate. Finally, the will should be notarized and registered with the local sub-registrar.

## Registration

Registration of wills is not compulsory, in fact, a registered will may be challenged in a court of law just as one that is not. However, registering the document authenticates the signatures of the testator and the witnesses. Additionally, a

registered will evidences the sound mind and free will of the testator. For registration, the testator and the two witnesses must sign the document in the presence of the local sub-registrar.

## Overseas assets and NRI successors

Nowadays, it is common for people to have assets abroad. In such cases it is advisable to prepare two separate wills. Both will be governed by Indian laws. If the successors happen to be Non-Resident Indians, then succession is additionally governed by the Foreign Exchange Management Act, 1999, which places restrictions on the transfer of funds and shares from India.

## Codicil – amendment to an existing will

The revision or amendment of a will is known as a codicil. There is no bar on how many times one may revise their will. However, every time the will is updated/revised, its updated version must be registered to afford it legal validity and enforceability.

## Will vs. Trust?

For individuals with a high net worth and ongoing profitable businesses, establishing a trust is advisable. Trusts can come into force during the lifetime of the settlor, which is a plus for

the settlor (trust maker) and the legal heirs. Trusts are also more tax efficient as payments through a trust are not taxed as

inheritance. Yet another benefit is that the assets covered in a private trust remain protected from lenders and creditors and cannot be liquidated if the business fails.

## What is a Probate and is it mandatory?

A probate is a court's stamp of approval on a will. It is sought after the death of the testator, and it is advisable to file for a probate as soon as possible. However, the law does not specify any timeline for this. Having a probate is mandatory for presidency towns of Bombay, Calcutta, and Chennai. For other places, probate may become necessary for the further transfer of property – a case sometimes observed with housing societies, RWAs or transfer of highly valued properties.

## What to watch out for

While making a will, the testator must ensure that the beneficiaries or the executor of the will are not also the witnesses. The executor must be clearly appointed in the will. Executor is the person who will execute the will after the passing of the testator. Further, one must watch out for challenges to a will. In such cases, if the will is registered, then it is unlikely that the authenticity of the document will be called into question.

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