

## **THINGS TO KNOW WHILE MAKING A WILL**

### **What is a will?**

“Will” is defined under Section 2(h) of the Indian Succession Act, 1925 as “the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.” In simple words, Will is a document drafted by a person with clear instructions as to administer his estate after his death, and directs the manner in which his property or assets are to be distributed or transferred to the beneficiaries specified in the Will. The person who makes or writes the will is known as the testator, and in whose favor the testator has bestowed the benefits is called the beneficiary or the legatee.

**When it comes into force:** A Will being a testamentary document comes into force, or is executed, only after the death of the testator.

**Registration of Will:** Registration of Will is not compulsory under Section 18 of the Registration Act, 1908. Although if a will is registered, it becomes strong legal evidence that the proper parties had been attested before the registering officers/ sub registrar and also avoids any future litigation.

**Who can make Will:** Any person who is about 18 years of age and of sound mind with his consent can make Will of his properties. There is no defined format laid down for forming a will, but there is a general procedure which is required to be followed by the testator while writing a Will to avoid any confusion at the time of Probate. The key things to take care while writing a Will are:-

- **Details:** Complete details of the testator and details of property must be mentioned in Will deed. Other information need to be mentioned is the full name of the testator, address, age, name of witness, their address, description of movable/immovable property testator wants to bequeath through Will deed.
- **Free Consent:** The testator must make the Will out of his free will, consent and without any pressure or coercion and must be in a sound disposing state of mind.
- **Details:** A detailed list of all the items and their current values is needed to be mentioned in the Will, like house, land, fixed deposits, etc. Testator must also give out information about the place where the important documents are kept, and if the documents are under the custody of the bank then testator has to write details about the releasing of the Will from the bank. The most important duty of the testator is to communicate the above

information to the executor of the Will or any family member, to make the Will valid after testator's death.

- **Ownership:** A testator while making a original Will should specifically mention that who should own his entire property or assets so that it will not affect the interest of the successors after his death.
- **Attestation and Execution:** Once the testator has finished writing or drafting the Will, it must be signed within the presence of at least two independent witnesses, who have to sign after the testator's signature. The date and place of attestation must also be mentioned.
- **Registration of Will Deed:** Registration of Will deed is optional. It is advised to register a Will deed to avoid any doubts as to whether the testator has executed the Will deed or not, whether the executor was in sound mental condition etc. Registration of Will deed is a conclusive proof of its execution.
- **Can Married Woman Make a Will:** Yes, as per Indian Succession Act, 1925, a married woman has the power to dispose of by the Will whatever property she could alienate during her life.

### **PROBATE OF WILL:**

On the death of the testator, the executor of the Will can apply for probate. The Court will ask the other heirs of the deceased if they have any objections to the Will. If there are no objections, the court will grant probate. **A probate is a copy of a Will, certified by the Court.** A probate is to be treated as conclusive evidence of the genuineness of a Will. In case any objections are raised by any of the heirs, a citation has to be served, calling upon them to consent. This has to be displayed prominently in the court. If no objection is received, the probate will be granted and then the Will can be executed.