

(for private circulation only)

PUTTING YOUR WISHES ON PAPER – ABOUT WRITING A WILL

Good old saying, “ *if there is a will there is a way* “. Certainly, if there is a **WILL** there is no confusion for your legal heirs after your demise. But the sad truth is that most of us neglect to write a **WILL**. Yes, writing a **WILL** is important because it avoids any bickering among your legal heirs after your leaving this beautiful world.

Legal Terminologies:

WILL - The legal declaration of the intention of a person with respect to his property, which he desires to take effect after his death

Testator – The person who makes the WILL

Legatee – Beneficiary ie. the person who inherits the property under the WILL

Executor – The person who will implement the WILL

Codicil - The instrument altering or adding to the WILL

Advantages of making a WILL:

Some of the advantages of making a WILL are,

1. It prevents stepping in of Succession Laws on your death.
2. Eliminates or reduces family disputes.
3. Through the WILL you can decide at what proportion, your assets are to be distributed to your legal heirs. If you not making a WILL, you are leaving that function to the Succession laws applicable to you.
4. Special care can be given to elderly parents, if you so wish.
5. If there is an important person in your life (who is not related to you) intestate succession will not help. But in your WILL, you can take care of that.
6. All your assets including Bank deposits will be known to your legal heirs. (remember, more than Rs.1.24 Lakh crores unclaimed deposits in our country ! Your deposits, however meagre, it will not add up to that, if your **WILL** reveals details of all Bank deposits)

7. You can provide for donation to charity. Succession laws cannot allow that.
8. If you have liabilities, you can give instructions, how and who should handle the same.

Important Points:

Below are some important points while making a WILL:

1. Testator need to be of sound mind.
2. She/He should be at least 18 years of age
3. Testator has option to appoint or not to appoint an Executor. It's not mandatory.
4. A WILL is required to be attested by two or more witnesses. Each of them should have seen the testator signing the WILL. [Sec. 63 (c) of the Indian Succession Act,1925.]
5. Legatees/Beneficiaries named in the WILL to abstain from signing as witnesses.
6. A WILL is a living document. Means, you can change/alter/amend it any time. any number of times. (Sometimes you may require it, if there is a change in your family circumstances.)
7. If you are excluding any legal heir, it is advisable to state the reasons therefor in the WILL.
8. A WILL can be executed on a plain paper.
9. A WILL is not a compulsorily registrable document. It is upon you to decide. If you go in for registratio, it can be proved easily in case of disputes.

WHERE TO KEEP THE WILL

The original of the executed WILL can be kept in Safe Deposit Locker. Or it can be entrusted to one of the legal heirs with the following notation:

“The original of the WILL datedis hereby entrusted to my husband/wife/daughter/son Shri./Smt.”

There is also provision in the Registration Act to deposit the WILL in a sealed cover with the Registrar. (Section 42 of the Registration Act,1908)

(Pls note, legal information is not legal advice. Our esteemed members are requested to consult a documentation lawyer, if they require expert advice on drafting and execution of a WILL Deed. This write up is provided for general informational purpose only)

{ for private circulation only}

DRAFT WILL DEED

(This is only a specimen, it may be customized according to individual requirement.)

I, Smt./Shri. d/o, w/o, s/o Shri. (permanent address of testator) now residing at (present residential address of testator) make this to be my last WILL and TESTAMENT.

Life is small and uncertain: I do not know when I leave this beautiful world. At present I am in sound and disposing mind and I fully understand what is right and wrong. Therefore, I want to make settlement of my all movable and immovable properties during my lifetime, in order to avoid any unpleasantness or dispute among my legal heirs after my demise. So long I am alive I will continue to be owner of all my properties. This Will is made by me without any force or compulsion from anybody in any manner, but with my free will and volition.

1. I have not made any will or other testamentary dispositions whatsoever hereto before, but if any made, I hereby revoke all my will, codicils and other testamentary dispositions and declare that **this is my last WILL and TESTAMENT** which I make on this day of(month), ...(year). My date of birth is

2. I am a retired Bank Officer/Manager/Executive and pensioner, not dependant on anybody else for my livelihood. In the year....., I am married to Shri./Smt. and my husband/wife is now agedyears and residing with me. One / two/..... child/children born to us from this wedlock: (i) my daughter/son.....(name) now agedyears and (ii) my daughter/son.... (name) now agedyears, (iii)

3. I am the sole owner of the legacies and devises mentioned in schedules (I) to (VI) attached to this WILL and therefore I have the absolute authority to bequeath and devise them by this Will. Any mistake in the description or any omission therefrom will not affect the dispositions hereby made and this **WILL** will apply to all my property of whatsoever nature and wherever situate and whether standing in my name alone or jointly with anybody else.

4. I hereby give, devise and bequeath all amounts lying in my Bank account or accounts, including those specifically mentioned in Schedule I attached to this WILL to my husband/wife. This bequeath shall have priority over all other bequests and dispositions and I will away those amounts to him/her to the exclusion of all other legal heirs.

5. I am the sole owner and in possession of one/two/three/.... items of immovable properties. I bequeath my immovable property(ies) situated at (here mention briefly the details of property such as Bldg. No./Sy.No./Village/Taluk, District, State etc.) specifically mentioned as item No. **1** (One) in Schedule II attached to this WILL to my husband/wife Shri/smt and item No.**2** (two) to my daughter/son Smt./Shri. absolutely. (likewise , item no.3 toetc.)

6. I will, give and bequeath all my Gold and Silver ornaments and jewellery items mentioned in Schedule III attached to this WILL unto my daughter/daughter in law/granddaughter/husband/wife/..... Smt./Ms./Shri. absolutely.

7. I give and bequeath the Shares/and Securities, MUTUAL FUND & PPF specifically described under Schedule IV to my husband/wife/daughter/son Shri/Smt.Ms.

8. I hold insurance policies for self/family for life cover as also properly which is spelt out in Schedule V to my Will. The death benefits/amounts receivable upon my death shall enure to the nominee or nominees of the policies.

9. I give and bequeath my miscellaneous assets described in Schedule VI to my husband/wife Shri. /Smt.

10. BEQUEST OF RESIDUE: I bequeath and devise all my movable and immovable property whatsoever and wheresoever not otherwise disposed of by this WILL to my husband Shri. / my wife Smt. absolutely. In the unfortunate event of my husband/wife pre-deceasing me, all of the legacies devised and bequeathed to my husband/wife under this WILL including the residue legacies shall devolve unto my daughter Smt./Ms. ,,,.... and my son Shri. in the ratio ... : ... ie.% (.....percentage) to my daughter and% (.....percentage) to my son.

OR

I bequeath and devise all my movable and immovable property whatsoever and wheresoever not otherwise disposed of by this Will to my husband/wife Shri./Smt.absolutely. In the unfortunate event of my husband/wife pre-deceasing me, all of the legacies devised and bequeathed to my husband/wife under this WILL including the residue legacies shall devolve unto my daughter/son Smt./Ms./Shri. subject to her/his paying% (percentage) of the same to my son/daughter Shri./Smt.

I have made this WILL while I am in sound health and of good understanding.

IN WITNESS WHEREOF I, the said (name) have put my signatures to this my WILL (to each page of this my WILL including the six schedules attached to the WILL) on this day of , 2021 at (place)

SIGNED AND DECLARED BY

(SMT./SHRI.)

Signed by the above named (name) as her/ his last WILL

IN THE PRESENCE OF TWO WITNESSES

1. NAME (full address) (Signature)

2. NAME (full address) (Signature)

SCHEDULES ATTACHED TO THE WILL DATED

Schedule 1 – Bank Deposits

Schedule II – Immovable properties

Schedule III – Gold Ornaments/Jewellery etc.

Schedule IV – Shares, mutual funds etc.

Schedule V – Insurance policies etc.

Schedule VI – Miscellaneous assets

(Testator to sign on each page of schedules also)

Place:

Date : (Name and Signature of Testator)

IN THE PRESENCE OF TWO WITNESSES

3. NAME (full address) (Signature & Date)

4. NAME (full address) (Signature & Date)

Notes:

1. Para 2 - (if the testator wishes to bequeath/devise any property to her/his son- in- law/daughter- in -law/grandchildren, it is advisable to mention their names also. If no property is intended to be bequeathed/devised to children, their details need not be mentioned)
2. Para 4 – Details of SB/Cash Certificates/FD etc. including account no., name of bank and branch to be mentioned in Schedule **I**
3. Para 5 - In schedule **II**, full details of immovable properties including Doc. No. , Name of S.R.O. etc to be given.)
4. Para 6 – Schedule **III** – Description of ornaments, weight of each item, if kept in locker – details of locker etc. may be given.
5. Para 7 – Schedule **IV** – folio no. may also be mentioned for mutual funds etc. For shares, name of company, no. of shares held, demat account details etc. may be mentioned.
6. Para 8 - Schedule **V** - name of Insurer, Policy No., sum assured etc may be shown. In law, except a beneficial nominee, the nominee who receives the death benefit is answerable to the legal heirs. But if the nominee refuses to pay, it may result in legal proceedings. Hence change of nomination can be done, if so, wished by the testator.
7. Para 8 – In Schedule **VI**, if vehicles are included, its details like model, make, Regn. No. to be shown.
8. Same place and date to be shown in the WILL deed and schedules thereto.