



FAQ's
On
WILL



FREQUENTLY ASKED QUESTIONS ON “WILL”

Q.1 What Is a Will?

- A. Will is a written declaration by a person about his wishes for all the matters such as distributing his / her properties, assets, wealth to family, relatives, outsiders, charities etc. after their death, to be made in the presence of two witnesses,

Q.2 What is the benefit of preparing the will?

- A. Preparing a will ensures that all your assets and properties are distributed and disposed of **as per your wishes** after your death avoiding disputes or legal interference in the family. Also, if you wish to give more share to some of your relatives/heirs and want to ensure that certain person should not get any of your assets and properties, then will is the only effective document to do the same. For example – if one wishes to donate organs, give flat to wife, give more / less to any particular son/daughter, give some amount to parents or also care taker / friend etc., such wishes can be mentioned in a Will which shall be binding to all – family, relatives, all laws, all courts including the Supreme Court of India.

Q.3 What will happen if I don't make a will?

- A. When you die without writing a Will (called “intestate” in legal language), all your properties, assets, wealth is distributed **as per Succession Laws** applicable to you, could be like the Hindu Succession Act. You must know that such succession laws have - fixed proportion to distribute properties to all / several family members which may not be as per your wishes. There could be chances of delay in distribution of properties and may lead to legal cases, disputes amongst family members etc.

Q.4 Who can make a will?

- A. Any person above the age of 18 can make a Will with sound mind i.e capable of understanding his actions and is free from any undue influences.

Q.5 Why should you not wait for old age to make a Will?

- A. You should make a Will soon after attaining 18 years of age since in today's world of uncertainty where untimely death due to accidents, heart ailments, terror attacks are becoming 'way of life' which is also why many people take insurance at a young age of 25 or earlier. If one takes insurance at a young age to provide financial support to the family in case of untimely

death, why not make a Will which is an instruction in writing to the family as on 'how to distribute insurance claim or other properties / assets.' Hence everyone should make a Will at any age above 18.

Q.6 How to make a will?

- A. Will can be handwritten or typed, however typed Will is preferred. Stamp paper is not required hence it can be on plain paper. Will should be in any language which is suitable to the person who has made the Will. Will should at least cover minimum details of your family, your properties / assets, your liabilities, your wishes, your bequeaths (property distribution wishes), names of two witnesses, date and place of signing, sign of the person who has made the Will and the witnesses on each page-.

Q.7 When can I make an oral will?

- A. This is called a Special Will which is only allowed to soldiers, airmen, navy persons. Also, some Muslims are allowed to make oral wills as per their personal laws.

Q.8 Are the laws different for different religions?

- A. Yes, this relates to the Succession laws where there are different laws applicable as per the religion of the deceased person. For example – for Hindu it is the Hindu Succession Laws, for Parsi and Christians it is the Indian Succession act, for Muslims it is as per the Sheriat Laws (different rules for Shia, Sunni, Khoja etc.)

Q.9 What is the rule- for the Witnesses of the Will?

- A. As per the law, a Will should be signed in presence of minimum Two Witnesses. It is **not necessary for Witnesses to read the content of the Will**, they are just confirming that the Will was signed in their presence. As per the law, witnesses can be called by courts in the event of any question on legality / authenticity of the Will. Nowadays, it is also advisable to do a video recording of Will signature event and clip can be kept in a safe manner along with the original Will so that it can be legal evidence, if required to prove legality of a Will.

Q.10 What is an Executor? Is it necessary to appoint an Executor to a Will?

- A. Executor is a person who is appointed by the person making a Will to be authorized to take action on all the wishes as per the Will. An Executor can be any person who is a beneficiary in the Will or any trusted person like family friend, lawyer or CA who can assist the family to act as per your wishes in the Will. It is not mandatory to appoint an Executor, however it is recommended.

Q.11 Is it mandatory to 'Notarise' or 'Register' a Will? What are the benefits?

- A. No, Notarisation or Registration of Will is **Not Mandatory**. However one can register the Will, anytime after execution for which no fee- is charged at Sub-Registrar's office except some scanning charges. If Will is registered, it means the person who has made his Will in presence of two witnesses will have visit Registration Office physically and register their Will in the presence of Sub-Registrar (Govt. Official), hence the chances of questioning the authenticity of the Will amongst the family / relatives is avoided. To register a Will, maker of the Will has to personally visit along with two witnesses (it is not necessary for these witnesses to be the same

who signed as witnesses to the Will signing) You also need to carry Original Will, last dated MBBS Doctor's certificate of for mental fitness and address proof.

Q.12 Which properties / assets can be mentioned in the will?

- A. It is advisable to mention all single / joint properties, wealth, assets, receivables as well as all liabilities / loans in the Will, including movable, immovable and intangible properties and assets. Movable properties will include Cash, Jewellery, FD'S, Bank Accounts, Insurance Policies, Vehicles & all your furniture, fixtures etc. Immovable properties will include all your Land, Building, Flat, Shop, Office, Plot, Garage etc.

Q.13 Can joint properties be included in a Will?

- A. Yes, person owning any joint property is allowed to mention his wishes in the Will for his share in the Joint Property. It is necessary to mention about all joint property titles to avoid unnecessary disputes.

Q.14 Can properties / assets where Nomination are filled also be included?

- A. Yes, legally a nomination is just a facility to claim property by a nominee in the event of death of owner and nominee will only act as Trustee for temporary period till legal heir is established as per the Will or as per the Succession Act, thereafter nominee has to handover those properties to their legal heirs. Nominee can be a legal heir. However, there is an exception to this hence one has to clarify all nominations in Will, if possible.

Q.15 Can rented properties / tenancy rights be included in a Will?

- A. No, tenancy rights are not a property or asset hence it can not be bequeathed in a Will.

Q.16 Can leasehold rights be included in a Will?

- A. Yes, leasehold rights can be bequeathed in a Will.

Q.17 Can an ancestral property or property received as a legal heir in the past be bequeathed by a Will?

- A. Ancestral properties in which title / ownership is legally transferred are allowed to be bequeathed by a Will.

Q.18 Can Business ownership in firm / company can be bequeathed in Will?

- A. Yes, ownership as a proprietor in a proprietorship firm OR share owned in a company can be bequeathed by a Will. For share in partnership firm as a Partner is allowed to be bequeathed subject to conditions, if any, in the Partnership Deed.

Q.19 Can share in HUF be bequeathed?

- A. No, share in Hindu Undivided Family can not be bequeathed.

Q.20 Which other properties / assets can be bequeathed by Will?

- A. One can bequeath pets, paintings, antiques, electronic items, furniture & fixtures, intellectual properties like Trademark, Patents, Copyrights, Licenses, Social Media Accounts, Personal Belongings, Books, etc.

Q.21 How to protect minor children?

- A. One can nominate guardians for minor children who are beneficiary in the Will, and such guardian will be responsible to look after the minor children and protect their share. Many a times, people create a Trust by way of Will for the benefit to all the Legal Heirs, Friends, Relatives or for Charitable Purpose.

Q.22 What about assets that you missed or forgot to mention in the Will,, or future assets?

- A. A general clause is included in a Will for residual properties / assets (miscellaneous assets that were missed) which specify should receive 'residual assets' and similarly a general clause is added for 'all the future assets'.

Q.23 Can a Will be changed in the future for addition / deletion or can a New Will be made?

- A. A person can make a new Will as many times as he wants OR for few changes,, he can also make Codicil which is a Supplementary to the main Will. However, it is necessary to mention in your Will that 'This is the Last will and all past Wills, if any, to be treated as cancelled' since only the last Will is legally valid.

Q.24 Where can a Will be stored / kept?

- A. Legally a will can be stored at any place. However it is advisable to store your will at a safe and secured location where it cannot be tampered with and it can be easily found by your family after your death. It may be kept in the safe custody of a locker, with a trusted person or with professionals like banker or solicitor who will take necessary steps to inform the executor after your death. Various banks and financial institutions offer custodian services for safe keeping your will.

Q.25 Can properties in foreign countries be bequeathed?

- A. Yes. However properties situated in foreign countries are governed by local laws in those countries & the procedure to enforce Will in such countries would be different from India. Therefore it is advisable to prepare two separate wills; one dealing with properties in India and the other with properties in foreign countries. Such Wills are called as concurrent Wills and are treated independent of each other unless interlinked.

Q.26 Can husband & wife prepare one single Will as Joint Will?

- A. Yes it is allowed where both the husband and wife bequeath all properties to other each other and final bequeath is mentioned by which properties are distributed to family, relatives etc. as per Joint Will. , However, such joint Will can take effect only after the death of both and not during the lifetime of either one. Many a times,, husband and wife prepare 'Mirror Will' which are separate individual Wills where each spouse gives all his / her property to their other spouse.

Q.27 Who can be a beneficiary under a Will?

- A. "Beneficiary" is a person to whom the properties are distributed or "bequeathed" under the will, i.e a person who gets the benefit under the will. Any person, body, trust, charitable institute,

society etc can be a beneficiary under the will. A beneficiary under your will can be your family members, relatives, friends, servants,, etc.. and you can opt to give your properties in charity. However Law has set-out procedure to be followed if you have close relatives and want to give all your properties and assets for charitable purpose. This restriction is not applicable in case of Parsis who can give all his/her properties in charity.

Q.28 Who can be termed as my legal heir?

- A. Legal heir is a person; male or female, who is entitled to succeed to the properties of the deceased person under the applicable personal law for succession. As per Hindu Succession Act – if there is no Will the properties are allowed to be distributed to all Class 1 heirs equally, if there is no one in Class 1 heir,, in such case properties are distributed equally to Class 2 heirs, if there are no such heirs in Class 2 also,, the properties are given to Agnates and lastly to Cognates. If no one is available – all properties are taken away by the Government.

Q.29 When and How can a Will be cancelled?

- A. One can cancel / revoke their Will at any point of time or even by making a fresh Will. Once a Will is made all the past / old Wills get cancelled. The will can be revoked by following ways:-
- i) By execution of a subsequent Will;
 - ii) By writing and declaring an intention to revoke the Will
 - iii) By burning, tearing or otherwise destroying the Will;

Q.30 Will I or my legal heirs be required to pay Income tax and other taxes in respect to properties under the will?

- A. No, as of date any property received under the Will does not attract any tax including capital gain tax. In past there was an Estate Duty tax which was abolished.

Q.31 What are special provisions in case of Will by Muslims?

- A. Muslims are mainly governed by their personal laws in respect to will and inheritance, and only certain part of general succession law in India , known as Indian Succession applies to them. As a general rule, Muslims can make a Will of only 1/3 rd of his/her properties and the remaining properties are distributed in tested succession as per the Sheriat Act.

Q.32 What are special provisions in case of wills by Christians, Parsis and Jews?

- A. In case of Christians and Parsis the Will gets cancelled / revoked on marriage. A Parsi is entitled to give all his property for charity by Will.

Q.33 What is probate of a will? Is it mandatory for all Wills?

- A. Probate is a legal certificate issued by the Court after the validity of the Final Will is proved. An executor nominated under the will can apply for probate. When the court grants the probate or certifies the Will, the executor would be entitled to take necessary steps to enforce the Will. Probate is not always necessary, however when there are many immovable properties or assets are of high value, the probate is insisted before the title of owner is changed to avoid any disputes in future.

Q.34 What if there is no Will, how to establish legal heir?

- A. In the event of 'No-Will' situation, if there are only movable properties, a Succession Certificate is to be obtained from Court. If the person has left behind immovable properties also,, in such case Letter of Administration is to be obtained from the Court.

Q.35 What is difference between beneficiary and nominee?

- A. Nominee is merely a trustee of the property and he / she is required to hand it over to the legal heir whereas beneficiary is the person entitled to receive the properties under the will.

Q.36 When are properties distributed as per the will?

- A. The properties are distributed as per the Will **only after the death of its maker.**

Q.37 Is it necessary to take help of a lawyer to prepare a Will?

- A. No for making simple Will one can take all precautions and Do It by themselves; however one has to be careful with words to avoid any vagueness or contradiction in Will and to avoid unnecessary misunderstanding / quarrel amongst family / relatives.