



Capital League

PRIVATE WEALTH MANAGEMENT

WILLS



Secure Your Legacy

— Knowledge Series —

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What is a Will?

A Will or Testament is a legal document that outlines the desires of an individual (known as the testator) regarding the distribution of their possessions and properties after their death. The testator's wishes, as stated in the Will, become effective only upon their demise. In India, the Indian Succession Act of 1925 recognises a Will as a legally valid document. Any mentally competent individual above 18 has the right to create a Will to distribute their assets and possessions.

Why it is important?

One of the primary reasons to make a Will is to ensure that your property and possessions can be distributed according to your wishes, even to individuals beyond immediate family members, after your death. Only legal heirs can receive the deceased's assets and properties without a legal Will. On many occasions, the inheritors cannot enjoy the legacy created by their ancestors due to family disputes originating in the absence of a Will.

Some Things to Keep in Mind When Making a Will

- **Registering the Will:** Consider registering the Will with a sub-registrar, even though it is not mandatory. Registration ensures legal validity and authenticity in case of a dispute. A Will can be made on plain paper; stamp paper is not required.
- **Safe Custody of Will:** Keep multiple copies of the Will in safe custody with the executor and oneself. Registered documents have a sealed copy with the Registrar's office.
- **Beneficiary Cannot be the Witness:** To ensure legal validity, the beneficiary and witness of a Will must be separate individuals.
- **The Will must have at least two witnesses:** The Will must be attested by two or more witnesses. The witnesses must have seen the testator sign or put the thumb impression; alternatively should have received an acknowledgement from the testator about the signatures. Each witness shall sign the Will in the presence of the testator.
- **Multiple Changes/Revocations are Allowed:** Changes or revocations can be made multiple times before the testator's death. Use an addendum for minor changes and complete cancellation for significant changes.



DIFFERENT TYPES OF

WILLS

1. Joint Will

2. Mutual Will

3. Holograph Will

4. Concurrent Will

5. Conditional/Contingent Will

INDIA

Different Types of Will in India

There are multiple kinds of Wills, each delivering a specific purpose: Here are some that are used frequently:

- **Holograph Will:** A completely handwritten Will prepared by the testator themselves. It is given special consideration in a court of law if there is a dispute regarding its authenticity.
- **Conditional/Contingent Will:** Comes into effect only if specific conditions mentioned in the document are fulfilled. If the conditions are not met, the Will is not legally binding and cannot be executed. An example of a conditional Will could be, "I make the following Will to be fulfilled only if I die on my vacation. . . ." It becomes null and void after the person returns from the vacation.
- **Joint Will:** A single document prepared and signed by two or more individuals, such as a married couple. It takes effect only after all the testators are deceased. It can be modified or revoked like any other Will during the lifetime of the testators if all parties agree.
- **Mutual Will:** Created by married couples based on mutually agreed terms and conditions. It Confers reciprocal benefits to the survivor if only one of the testators dies.
- **Concurrent Will:** These are separate Wills for distributing different assets and possessions. Each document can be legally valid and registered separately as long as there is no overlap in the assets mentioned.

A Will can be prepared through a lawyer, wealth manager or on your own. It can be handwritten, printed or online (digital). Several banks and wealth management firms in India have tie-ups with legal firms specialising in Will preparation. Hiring a lawyer is preferred to ensure the document's legal validity and act as executor, facilitating smooth distribution after the testator's death. Online Will preparation tools are convenient but should be supplemented with legal advice to avoid errors or omissions.

Key Steps In Drafting A Will



Steps in Drafting a Will

- **Take Stock of Your Assets:** Make a comprehensive list of all your assets, including properties, bank accounts, investments, personal belongings, and other valuables. Don't forget to include digital assets (like Crypto, NFTs, online investments etc.), pets, assets with emotional value, favourite pieces of jewellery, and your collection of art and artefacts.
- **Identify Beneficiaries:** Decide who Will be the beneficiaries of your assets. It can include immediate family members, friends, charitable organisations, or any other individuals or entities to whom you wish to leave your assets.
- **Seek specialist guidance:** Different asset classes like property, mutual funds, and Fixed Deposits may have different nuances that must be understood and navigated. Like, the nominee of the Fixed deposits/Life Insurance policies prevails over the nominee in the Will. It is best to involve your wealth manager or investment advisor to understand the nuances.
- **Choose an Executor:** Appoint an executor in your Will who Will execute your wishes and ensure the proper distribution of assets according to your Will.
- **Seek Legal Advice:** Consult a qualified lawyer experienced in Will and estate planning. They can guide you through the legalities and complexities of drafting a Will, ensuring its validity and adherence to applicable laws.
- **Provide Specific Instructions:** Be clear and specific regarding asset distribution instructions to avoid ambiguity or potential disputes. If multiple assets are under an asset class, quote the document numbers specifically and then assign it absolutely or partially as per your choice.
- **Consider Guardianship:** If you have minor children, appoint a legal guardian for them in your Will to ensure their well-being and care in case of your untimely demise.
- **Sign and Execute the Will:** After drafting the Will, sign it in the presence of at least two witnesses who are not beneficiaries. The witnesses should also sign the Will to validate its authenticity.
- **Store the Will Safely:** Keep the original Will in a secure and easily accessible location, and inform the executor or a trusted family member about its whereabouts.

Revocation And Altering of Will

The frequency of refreshing a Will may vary depending on individual circumstances, but some key life events should prompt you to review and update your Will:

- **Change in Marital Status:** Marriage, divorce, or remarriage should prompt you to update your Will to reflect your new family situation.
- **Birth or Adoption of Children:** The arrival of new children or adoption may necessitate changes in your Will to include them as beneficiaries or appoint a guardian.
- **Change in Financial Situation:** Significant changes in your financial status, such as acquiring new assets or substantial wealth, may require adjustments to your Will.
- **Death of Beneficiary or Executor:** If a beneficiary or executor named in your Will passes away, you must make revisions.
- **Change in Wishes:** If your intentions regarding the distribution of assets have changed, it is essential to update your Will accordingly.
- **Relocation to a Different Jurisdiction:** If you move to a different country or state, it is advisable to review your Will to ensure it complies with the legal requirements of the new jurisdiction.
- **Passage of Time:** It is prudent to review your Will periodically, such as every three to five years, to ensure it aligns with your current wishes and circumstances.

Conclusion

Preparing a Will might seem daunting, but ensuring that your assets are distributed according to your wishes after your demise is important. A valid Will reflects your desires and ensures your loved ones are cared for even in your absence.

Drafting a Will is a significant step in securing your financial legacy and ensuring your assets get distributed as desired. Seek professional and legal advice during the process to ensure its validity and compliance with applicable laws. Additionally, refresh your Will whenever there are significant life changes to maintain its relevance and effectiveness. Regular reviews and updates Will give you peace of mind knowing that your loved ones Will be cared for according to your wishes, even in your absence.