

36 Tips To A Perfect Last Will & Testament

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A Will is essentially a written declaration by a person describing her wishes on matters concerning distribution of her self earned properties, assets and wealth to family, relatives, outsiders, charities etc. after death. In order to be legally valid, a Will has to be signed in the presence of two witnesses, who do not necessarily need to be aware of the contents of the Will.

In India, depending on a person's religious affiliation, separate succession laws will also be applicable and need to be considered when preparing a Will. Often a Will needs to be notarised, registered or probated from the High Court. The requirements are different in each case and matters can quickly become complicated for a layman who is preparing a Will for the very first time.

Although a Will is intended to be a simple document to dispose of assets and wealth of a deceased person, lack of attention to detail can lead to complications and disputes and even render the Will invalid. Here are 30 most commonly asked questions which will help you get all your facts in order while making this important document.

1. What is the benefit of preparing a Will?

Preparing a Will ensures that all your assets and properties are distributed and disposed of as per your wishes and helps avoid disputes or legal interference in the family after your demise. Also, if you are planning to give a bigger share to some of your relatives/heirs or want to ensure that one or more persons are either disinherited or get a smaller share, then a Will is the only effective document to do it. For example, if one wishes to donate organs, give a flat to his wife, give more/less to any particular son/daughter, provide for surviving parents or a care taker/friend/pet/charity etc.,

such wishes can be mentioned in a Will and shall be binding on all – family, relatives, all laws, all courts including the Supreme Court of India.

2. What will happen if I do not make a Will?

When you die without writing a Will (called 'intestate' in legal language), all your property, assets and wealth is distributed as per succession laws applicable to you based on your religion. For instance the Hindu Succession Act applies to Hindus, others have their own laws (more later). Do note, that such succession laws have fixed proportion of assets that can be distributed to various family members and this may not necessarily be as per your wishes. There could also be a delay in distribution of properties due to litigation or disputes amongst family members etc.

3. Who can make a will?

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

4. Why should you not wait until old age to make a Will?

We live in uncertain times, so you should ideally make a Will anytime after attaining 18 years of age or at least when you start earning. Just as people take an insurance policy at 25 to provide for their family, why not also make a Will which is an instruction in writing to the family as on how to distribute insurance claims or properties/assets.

5. How should one make a Will?

A Will can be handwritten or typed, however a typed Will is preferred. Stamp paper is not required, hence it can be on a plain paper. A Will can be in any language that suits the person making the Will. The Will should cover minimum and precise details of your, family, your properties, your assets, your liabilities, your wishes, your bequests (property distribution wishes) and must have the names of two witnesses, date and place of signing, signature of the person who has made the Will and the witnesses on each page. Ideally, identify the witnesses correctly with names,

middlename and addresses to avoid confusion as to their identity. The same goes for executors and those who you bequeath your asset to.

6. When can I make an oral Will?

This is a Special Will which is only allowed to soldiers, airmen and navy persons while they are involved in combat or on the high seas and facing a threat to their lives. Some Muslims are allowed to make oral Wills as per their personal laws.

7. Are the laws pertaining to Wills and transmission different for different religions?

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

8. What is the rule for Witnesses of a Will?

As per the law, a Will should be signed in the presence of minimum two witnesses. It is not necessary for the witnesses to read the contents of the Will, they are just confirming that it was signed in their presence. As per the law, witnesses can be called by courts in the event of questions arise on the legality or authenticity of the Will. Nowadays, it is also advisable to do a video recording of the Will being signed and keeping the recorded clip safe along with the Will, so that it can be presented as legal evidence of require to prove legality of Will. Identifying the witnesses clearly is useful, especially when they have fairly common names and surnames.

9. Who is an Executor? Is it necessary to appoint an executor to a Will?

An Executor is a person who is appointed by the person making a Will 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 such as a family friend, lawyer or CA who can assist the family to act as per your wishes. It is not mandatory to appoint an Executor, however it is recommended.

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

No, notarisation or registration of a Will is not mandatory. However, one can register the Will anytime after execution, for which no fee is charged at the sub-registrar's office (except some scanning charges). If Will is registered, it means the person who has made their Will in the presence of two witnesses, would have visited the Registration Office physically and registered the Will in the presence of sub-registrar (government official). Hence, chances of questions arising on the authenticity of the Will can be avoided amongst family/relatives.

In order to register a Will, the maker has to personally visit along with two witnesses (not necessarily the same ones who have signed on the Will). You will also need to carry the Original Will, last dated MBBS doctor's certificate certifying mental fitness and some form of address proof.

11. Which properties/assets can be mentioned in the Will?

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.

12. Can joint properties be included in a Will?

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 in the future.

13. Do properties/assets where Nomination are filled need to be included in a Will?

Yes, legally a nomination is just a facility to claim property by a nominee in the event of death of owner. A nominee will only act as Trustee for temporary period till the

legal heir is established as per the Will or as per the Succession Act. Thereafter, nominee has to handover those properties to the legal heirs. Nominee can be also be a legal heir. However, there is an exception to this hence one has to clarify all nominations in Will, if possible.

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

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

15. Can leasehold rights be included in a Will?

Yes, leasehold rights can be bequeathed in a Will.

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

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

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

Yes, ownership as a proprietor in a proprietorship firm, or shares 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.

18. Can share in HUF be bequeathed?

No, a share in Hindu Undivided Family cannot be bequeathed.

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

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

20. How to protect minor children?

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

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

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

22. Can a Will be changed in the future for addition/deletion or can a new Will be made?

A person can make a new Will as many times as he wants. If you want to make a few small changes, you can also make a 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, are to be treated as cancelled and only the last Will is legally valid.

23. Where can a Will be stored/kept?

Legally a will can be stored at any place. However it is advisable to store your Will at a safe and secure 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 a 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.

24. Can properties in foreign countries be bequeathed?

Yes. However properties situated in foreign countries are governed by local laws in those countries and 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.

25. Can husband and wife prepare one single Will as Joint Will?

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

26. 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, 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 purposes. This restriction is not applicable in case of Parsis who can give all his/her properties in charity.

27. Who can be termed as my Legal Heir?

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 the Hindu Succession Act, if there is no Will the properties are allowed to be distributed to all Class I heirs equally; if there is no Class I heir, then in such cases properties are given to Agnates and lastly to Cognates. If no one is available, all properties are taken away by the Government.

28. When and how can a Will be cancelled?

One can cancel/revoke their Will at any point of time or while making a fresh Will. Once a new Will is written, all the past/old Wills get cancelled. The Will can be revoked by following ways:

- By execution of a subsequent Will;
- By writing and declaring an intention to revoke the Will;
- By burning, tearing or otherwise destroying a Will.

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

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

30. What are the special provisions, in case of Wills by Muslims?

Muslims are mainly governed by their personal laws in respect to Wills and inheritance, and only certain portions of general succession law in India, known as Indian Succession Act are applicable to them. As a general rule, Muslims can make a will of only one-third of his/her properties and the remaining properties are distributed in tested succession as per the Shariat Act.

31. What are the special provisions, in case of Wills by Christians, Parsis and Jews?

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

32. What is a probate of a Will? Is it mandatory for all Will?

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.

33. What if there is no Will, how is a legal heir established?

In the event of a 'no-will' situation, if there are only movable properties, a succession certificate is to be obtained from a Court. If the person has left behind immovable properties, also in such cases, a Letter of Administration is to be obtained from the Court.

34. What is the difference between beneficiary and nominee?

Nominee is merely a trustee of the property and he/she is required to hand it over to the legal heirs, whereas a beneficiary is the person who is entitled to receive the properties under the Will.

35. When are properties distributed as per the Will?

Properties are distributed per the Will only after the death of this maker.

36. Is it necessary to take the help of a lawyer to prepare a Will?

No, for making a 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 the Will and to avoid any unnecessary misunderstanding/quarrel amongst family or relatives.

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