

Chandrawat
& Partners

Will Services in India

A guide on will services in India

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Preface

A last will/testament is legal documents that express/communicate the final wishes of a decedent (the testator) for the administration and division of his estate after his death. A person can ensure as to how the property should devolve and to whom it shall devolve, after his death, through a will. If a person dies without leaving behind will, his property would devolve by way of law of intestate succession and not testamentary succession (i.e. in accordance to the will) Hence, it is preferable that one should make a will to ensure that one's actual intension is followed and the property is devolved accordingly.

Will is an important testamentary instrument through which a testator can give away his property in accordance to his wishes. Will is the legal declaration of a person's intention which one wishes to be performed after death and once the will is made by the testator it can only be revoke during the lifetime. A person cannot give his ancestors property in the form of a will but can make a will only of self-acquired property. A will does not involve any transfer, nor affect any transfer inter-vivos, but it is an expression of intending to appoint a person who will look after the properties after testator's death.

A will regulates the succession and provides for succession as declared by the testator. The origin and growth of will amongst the Hindus is unknown. However wills were well known to the Mohammedans and contact with them during the Mohammedan rule and later on with the European countries, was probably responsible for the practice of substituting informal written or oral testamentary instruments with formal testamentary instruments. One can make a legal declaration known as a Will or testament to name an executor who will manage their estate and ensure the transfer of their property to the intended recipients after their death.

A will can be made by anyone above 21 years of age in India. A will is a statement made by a testator in the written form stating the manner in which his estate/property must be distributed after his death. A will being a testamentary document comes into effect after the death of the testator and if the person dies without writing any will then is said to be have died intestate. The person in whose favor the testator bestows the benefits called beneficiary or legatee. A will is otherwise called as testament.

Need of a will



The reasons as to why a will is needed are as follows:

- The law of inheritance does not consider the fact as to whether the deceased wished or did not wish to let any of the family members inherit his property and in what proportion whereas by way of a will the testator can apportion the property as per his wish.
- At times it has been seen that the deceased had properties both immovable and moveable which his inheritors may not know, however, a will ensures that all kinds of property are fairly distributed by the testator during his lifetime.
- It is a very standard legal requirement now for transferring real estate, bank deposits, stocks & shares, interest in the business.
- One can preserve legacy by leaving a part of estate to a charitable organization.
- A will helps in avoiding any lengthy processes and delay in the distribution of assets. Having a will eases the way for nominees/legal heirs to get easier access to assets of the deceased.



Why should one have a Will?

A will makes it easier for family or friends to distribute the property after death of a person, without a will the process can be more time consuming and stressful. If one does not write a will, everything owned will be shared out in a standard way defined by the law, which is not always the way one might want. A will can help reduce the amount of inheritance tax that might be payable on the value of the property and money one leaves behind. Writing a will is especially important if one has children or other family, who is a dependent financially, or if one wants to leave something to people outside immediate family.

Essential Elements of will

The following checklist in a will helps ensure its enforceability:

- The will should have the details of the testator, for example name, address.
- The need for making the will should be spelt out along with the fact that the testator is of a sound mind and is making the will voluntarily and there is no coercion.
- Use of unambiguous language in bequeathing of the estate.
- The name of the executor (the person named by the testator to execute the testator's wishes) should be mentioned.
- The schedule of properties should be appended and the will should be signed by the testator and attested by two witnesses.

Types of will

Privileged will

A privileged will is one that can be made by a member of the armed forces engaged in actual warfare or employed in a certain expedition. As a will is nothing but a legal declaration, certain formalities must be met with for making a will in India. However, considering the associated possibility and dangers of sudden death and lack of time, owing to the nature of their line of duty, such formalities are somewhat relaxed for the armed forces. In India, the privileged will cases are governed by the Succession Act of 1925.



Unprivileged will

An unprivileged will under Succession Act is one that can be created by any individual other than those who are allowed to make a privileged will. The person creating the will must be of sound mind (should have testamentary capacity) and should have attained the age of maturity. Otherwise, the will cannot be enforced. As a will is nothing but a legal declaration, certain conditions must be met with making a valid unprivileged will in India. An unprivileged will is to make sure that the property gets distributed/transferred as per one's wish, after death.



Contingent/Conditional will

Execution of contingent wills are dependent on happening of an event and if event occurs in the future only then the will is to become effective. Such wills are created for multiple purposes. As the name of the will suggests, it was established under specific circumstances, and in order to carry out this will, a number of considerations must be made. The will would not be carried out if the condition is not met or is unsuccessful. Any condition which is contrary to the law or is invalid in nature cannot be incorporated in a will.

Joint will

When two or more people agree to make a conjoint will, such testamentary documents are known as joint wills. Such wills are generally created between married couples, with an intention to leave the property to the spouse after one of them dies. A joint will can also be created with an intention to take effect after the death of all the testators.



Mutual will

Mutual wills are kind of wills in which two people agree to formulate a will on the mutually agreed terms and conditions. The testator creates the other person as legatee in such wills. Generally, married couples who have children from their first marriage create such wills to ensure the interest of those children. The terms and conditions of will remain binding on the surviving partner after the death of first partner.

Governing Rules and Regulation

Will registration is an important legal procedure that ensures that an individual's assets are distributed according to their wishes after their demise. It is a way of ensuring that your loved ones are taken care of even after you are gone. In India, the process of will registration is governed by the Indian Succession Act 1925.

In India, it is not mandatory to register a will. However, individuals may voluntarily choose to register their will with the Government of India's sub-registrar's office by adding an extra witness. This process requires additional effort and cost, but it can benefit the family if someone challenges the authenticity of the will, as registration helps prove its genuineness without requiring witnesses to appear in court.



License and Registration

In India, there is no legal requirement to register a will, but it is always recommended to do so to ensure its authenticity and validity. A will may be written and registered by any adult who is at least 18 years old and of sound mind.

The following are the eligibility criteria for registering a will in India:

- To create a will, the person (testator) must be mentally competent at the time of creating the will.
- The testator must be 18 years of age or older.
- The will must be signed by the testator in the presence of at least two witnesses who are also mentally competent and over 18 years old.
- The two witnesses must sign the will in the presence of the testator.
- The will must clearly state the testator's assets, beneficiaries, and any other specific terms and conditions.
- The will must be written in a language that the testator understands.
- The testator must be aware of the consequences of creating a will and the will should not be created under any pressure, coercion, or undue influence.



Registration of will

Under section 18 of the Registration Act, 1908 the registration of a will is not compulsory. However, it is advisable to register it as it provides strong legal evidence about the validity of the will. Once a will is registered, it is placed in the safe custody of the registrar and therefore cannot be tampered with, destroyed, mutilated or stolen. It is to be released only to the testator himself or, after his death, to an authorized person who produces the death certificate.

Procedure of will registration

- Normally a will is signed at the home/office of the person in presence of two witnesses and registration of a will can be done during lifetime after a will has been signed.
- Will is to be registered at the office of sub-registrar of assurances which is in the jurisdiction of the residence of the person who made the will.
- The testator must be personally present at the sub-registrar's office along with two witnesses.
- Registration of a will normally takes a maximum of up to 30-45 minutes, however preparation may take 3 days for documentation, witnesses and appointment at the Sub-registrar's office.

Documents required for the registration

- The person making the will has to go to Sub-registrar's office with 2 passport size photographs
- A mental fitness certificate of the testator from a doctor
- Original signed will
- Two witnesses must also be present with their 2 photographs
- Photo proof of person who has made the will
- Photo proof of the two witnesses
- Address proof of the person who has made will
- Pan card of person making will as well as of two witnesses

Who can get access to registered will?

As per Indian Laws, not everyone is allowed to see the registered will, only the following persons are allowed to see their respective will-

- Testator himself by making the request at the sub-registrar office
- After the death of the Testator, his legal representatives along with the executor can procure the registered will by making an application to the sub-registrar office and only after due verification they are allowed to procure the will.

Benefits of registering will

There are certain benefits for registering the will which is as follows:-

- Registered will provides safety in the sense that if the original will gets misplaced or destroyed by any person, then the copy of the original will can be procured by submitting an application to the sub-registrar office
- It provides secrecy as we have seen above not everyone is allowed to see and procure the will from the sub-registrar office.
- It ensures transparency in the sense that only the testator himself or the executor can register the will at the registrar office

Registered will act as evidence in the sense that if there exists any dispute between the original will and duplicate will, then the will which is registered will be rendered valid as per Indian laws.



Dispute Resolution

Disputes over wills can arise for a variety of reasons, such as:

- Disagreements about the interpretation of the will
- Challenges to the validity of the will
- Disputes over the distribution of assets

If a dispute arises over a will, it is important to resolve it as quickly and efficiently as possible. There are a number of different ways to resolve disputes over wills, including:

- **Mediation:** Mediation is a process in which a neutral third party helps the parties to reach an agreement. Mediation is a non-binding process, which means that the parties are not legally obligated to accept the mediator's recommendations. However, mediation is often successful in resolving disputes because it allows the parties to have a say in the outcome.
- **Arbitration:** Arbitration is a process in which a neutral third party is appointed to decide the dispute. Arbitration is a binding process, which means that the parties are legally obligated to accept the arbitrator's decision. Arbitration is often faster and more efficient than litigation, and it can be a good option for parties who want to avoid the public scrutiny of a court case.
- **Litigation:** Litigation is the process of resolving a dispute through the court system. Litigation can be a lengthy and expensive process, but it is sometimes the only option available to parties who cannot reach an agreement through mediation or arbitration.



How we can help?

Our team of professionals provide services as follows-

- Provide information on the legal requirements for making a will in India- Our team can help with the types of wills that are valid in India, the requirements for witnesses and the process for registering a will.
- Create a user-friendly platform for people to make wills online-Our team can be secure and easy to use, and it should allow people to create wills that are tailored to their specific needs.
- Offer legal advice and support to people who are making wills- Our team can help people to understand the legal implications of their decisions, and ensuring that their wills are valid and enforceable.
- Market the firm's will services to potential clients. -Our team can provide help through online and offline channels, and it should focus on highlighting the firm's expertise and the benefits of using its services.



Chandrawat and Partners offers services like will drafting, will registration, will custodianship, will executorship, will translation, will administration, will review and revision all over India through its associates as a value addition services to fulfil wishes of the will writer. Our team will always keep interests of clients in mind and draft will as required.

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