

Financial Wisdom Have You Made Your Will? Here's How (including Samples)

HOW TO MAKE A WILL

It is always advisable to execute a will. No particular form is prescribed by law. It can be handwritten or typed on thick paper with each page signed by the testator and the attesting witnesses. Registration of the will is optional. The only legal requirements are the testator should be of sound and disposing mind at the time of executing the will, the testator has signed in the presence of two attesting witnesses each of whom will also sign in the presence of the testator and an endorsement to this effect is necessarily made before the signature of the testator after which the attesting witnesses should affix their signatures along with their addresses. A suggested format is given below. However legal advice may be taken to prepare the will to suit individual circumstances. It is also necessary to ensure that the nominations and the provisions of the will are consistent with each other.

How to make a WILL.

- (a) A WILL may be hand written or typed, which is preferable for sake of clarity.
- (b) There is no particular form.
- (c) Stamp paper is not essential but paper should be durable.
- (d) Registration of a WILL is not mandatory but desirable to safeguard against loss and fraud. It also obviates the necessity of witnesses to appear in the court at the time of probate of the WILL.
- (e) For Registration of the WILL the testator and both the attesting witnesses have to appear, sign and attest the WILL in the presence of the Registrar. Each Individual should carry two copies of recent Photographs.

Clauses in a WILL.

- (a) Name and address. Here state your name, father's name and address including your District.
- (b) Reasons and Intentions: Here state necessity or urgency if any for making the WILL.
- (c) Sanity and own volition. State that you are making the WILL

voluntarily without any pressure and that you are in full control of your mental faculties.

(d) Enumeration of Heirs and Properties. Give names and father's name of your spouse(s), children, dependent father, mother and unmarried daughter(s).

(e) Bequest. Use clear and unambiguous language in allotting legacies to each Heir. Intention conveyed by the WILL should be clearly defined. Uncertainty of intention renders the WILL Null and Void.

(f) Appointment of Executor(s). Be careful in nominating the Executors. Firstly an executor should be extremely dependable, honest of good health and younger in age and secondly he should be willing to take over the responsibility.

(g) Execution and Attestation. A WILL is to be signed by the testator or his nominated representative in the presence of the two attesting witnesses, who should sign in presence of each other and say so in writing.

Registration of a WILL. Register only single copy of the WILL to avoid confusion. If WILL has not been registered and one of the witness expires a fresh WILL have to be drawn. Also at the time of probate of the WILL both the witnesses are required to be present in the court. To avoid this registration of the WILL is helpful. If an Executor predeceases the Testator a fresh WILL should be executed. It is advisable to select witnesses and executors of younger age and enjoying good health. Each of them should be willing to undertake the responsibility assigned to him.

Safe custody of a WILL.. For safe custody a WILL should be kept either with the Registrar, the Solicitor, Banker, in your locker, with a dependable friend or in the house at a safe place.

Enforcement of a WILL. A WILL is enforced, either by a Probate or by Letter of Administration (Succession Certificate). In case where witnesses can not be produced in the Court then a Letter of Administration is to be obtained from the District Court.

Probate. To obtain Probate of the WILL, the beneficiary or the Executor should make an application to the District Judge U/S 264 of Indian Succession Act 1925. He may transfer the case to the CJM of competent jurisdiction. In order to obtain the Probate of the WILL, there are two legal requirements. Firstly, to establish in the civil court of law

that the WILL in question had been made voluntarily and signed by the deceased person in the presence of independent witnesses. And secondly, to ascertain that there was no subsequent WILL executed by the deceased person. To establish the first requirement the persons who have signed as witnesses are required to appear in the District Court and give evidence to authenticate the WILL, in question. If the WILL has been registered, the appearance of witnesses in the civil court is dispensed with. To establish the second requirement the civil court promulgates notice in Govt. Gazette and in local newspapers To Whom It May Concern to produce before the court within given period, any WILL, if held by any one claiming to be made by the said diseased person. When any other member of the family does not contest the WILL in question, a Probate of the WILL is Ordered by the court. In the circumstances when WILL is not registered and the Witnesses to the WILL have predeceased or not traceable, then the heir has to obtain succession certificate for claiming estate of the deceased.

Obtaining Succession certificate. Where no WILL has been executed, found or produced, a legal heir requires a Succession Certificate to possess the legacy. To obtain a Succession Certificate a legal heir should apply to the District Court to issue it, enclosing original death certificate of the Deceased and proof in support of his claim. The Court may issue notice inviting objections if any from other claimants, returnable within three months. If satisfied the court may appoint an Administrator/Executor to execute the Estate or issue a Succession Certificate to the applicant.

Suggested format for a will is given below.

SUGGESTED FORMAT FOR WILL

I, _____, son of _____, aged _____ years, Resident of _____ hereby revoke all former wills and testamentary dispositions made by me and declare this to be my LAST WILL and TESTAMENT.

I declare that I am of sound disposing mind and I am making this Will of my own free will and accord without any persuasion, undue influence or coercion whatsoever.

I hereby leave, devise, bequeath and give to my wife, Mrs _____, aged _____ years, all my property, movable and

immovable, whatsoever and wheresoever, which I may be possessed of or entitled to at the time of my death.

AND I hereby appoint my wife, the said Mrs----- to be the sole Executor of this my Will.

IN WITNESS WHEREOF I, the said _____ have hereto signed at _____ on this the _____ day of _____

Signed by the said _____ as his LAST WILL and TESTAMENT in the presence of us, present at the same time, who in his presence and in the presence of each other, sign as witness hereto.

Signature Name and Full Address of Witnesses

- 1.
2.

ANOTHER SPECIMEN OF A WILL

I, -----S/O-----

R/O-----hereby declare this present to be my last WILL which I make on this _____ day of _____ 2014. With the last WILL of mine, I hereby revoke testamentary disposition hitherto fore made by me.

I am about.....years of age. Since life is so uncertain, death may come suddenly; I make this WILL so that after my death, no misunderstanding or disputes arise between my wife and children, the love and affection among them may remain forever.I married..... D/O-----

-----. The marriage was solemnised according to Hindu rites in 19-----.That, we have.....children born during our wedlock. All of them are married and are well settled in their lives. Particulars of our children are as under:----- (a)-----

(b)-----

My wife and I have acquired all our moveable and immoveable property from our earnings and savings without any contribution from our parents and children. Our house, No..... (With garage), located in sector.....of----- is jointly owned and registered in our names. Our entire Bank/ post office

accounts, Fixed Deposits', Bonds, Shares and Debentures are held jointly in our names. That, I am making this WILL while in sound state of mind voluntarily out of my own free will without any compulsion or pressure from any person or having a second disposing mind that, I bequeath, all my property moveable and immoveable, cash, balances in all. accounts, Shares and Debentures to my wife Smt..... With full and absolute ownership rights and power of disposal.

Signature of testator

That, if I and my wife die within a short span of time or without my wife making a WILL, then all our property shall be distributed equally in our children as mentioned above or as jointly agreed upon by them. I hereby appoint my wife Smt to act as Executor, depending on her availability for the expedient execution of this my last WILL.

In witness whereof I, the above named Testator have signed this WILL hereunder on the day, month and year written above in the presence of two witness who have concurrently attested the same.

Signature of Testator

Date..... _____

Place-----

Signed by the above named Testator _____

S/O.....in our presence at the same time and each of us has in the presence of testator signed our name hereunder as an attesting WITNESSES.

Signature of Witness No. 1 Signature of Witness No.2

Name _____ Name-_____

S/O _____ S/O - _____

Address-_____ Address_____

Dated-_____ Dated _____

Place _____ Place_____