

HOW TO WRITE A WILL

Deepak Dhawan

Former ED (Law & CA) CO

Indian Oil Corporation Limited



What is WILL?

- WILL means the Legal Declaration/intention of the testator concerning the disposition of his property to be carried into effect after his death.



Terminology IN WILL



TESTATOR is a person who has made a will.



LEGATEE means a person to whom property is bequeathed.



BEQUEST/LEGACY means property given under the will.



TESTAMENTARY SUCCESSION means disposition of property to the legatee under WILL.



INTESTATE SUCCESSION means succession to the property of a person who has died without making a WILL.

Why one should make a WILL



In India succession to the immoveable or moveable property of a person deceased is regulated by the law to which he is governed.



Right to make a WILL is a privilege given to a person to vary the course of succession prescribed under the law and dispose of the property as per his choice.

Why one should make a WILL?



In the absence of a Will, the property of the deceased is distributed among the legal heirs. At that time, law will not look into the opinion or wish of the deceased regarding distribution of the property. All are equal before the law and law does not make distinction among the legal heirs.



Sometimes, the deceased may wish to give more share to a legal heir or exclude some of the legal heirs from enjoying the property.



It will permit the deceased to donate certain property to school, charity or a third person who took care of the deceased during his lifetime.



It is a good tool to manage the property in cases of Divorce / remarriage.

Succession Law in India

Religion	Legislation
Hindu includes Buddhist, Jain, Sikh	Hindu Succession Act 1956
Christian	Indian Succession Act Part V Chapter I
Muslim	Muslim Personal Law
Parsi	Indian Succession Act Chapter III

Rules of Succession in the case of Male Hindus

SCHEDULE

[See section 8]

HEIRS IN CLASS I AND CLASS II

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; [son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son] of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son.

Class II

I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughters' son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation : In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

Rules of Succession in the case of Female Hindus

Section 15 in The Hindu Succession Act, 1956

15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

Nomination v/s WILL

One has made a nomination to all his Demat accounts, Bank accounts; Fixed Deposit accounts; pensionary benefits.

Why should one make a WILL?

Making a nomination does not mean that the nominee will get the entire proceeds. The nominee is the Trustee for the legal heirs or representatives and must receive the amount and distribute the same among the legal heirs/representatives as per the law of succession.



Whether Will is mandatory?



There is neither a legal compulsion nor a legal obligation to write a Will.



One cannot be compelled to produce / show the Will he has made since Will is a private and confidential document during the life time of the testator.

Who should make a WILL?



A person who is holding property.



A major person.



A sound mind person.



Free Consent

Requirements of WILL



Must be in writing.



Must be signed or put the mark by the testator.



Must be attested by Two or More witnesses.



Place and date on which WILL is made.

Format of the WILL



WILL is required to be written on plain paper. It need not be drawn on Stamp Paper or Legal paper.



There is no particular/standard format of will under the law.



Law is silent on how WILL should be written. It may be handwritten or typed.



Law does not specify the language in which WILL should be written. It can be in any language.

Wording of WILL



There is no specific language or the right words for writing WILL. There are no technical words or terms of art to be used in a WILL.



The important thing is that the language used by the person making the WILL be such that testator intentions can be known or gathered from it.

Preparation of WILL - Steps



Make a list of all immoveable and moveable properties.



The moveable property includes Bank Accounts, Saving accounts in Post office, D-emat Account for shareholding, ornaments (gold, silver, and diamonds), Liquid Cash, Annuity



The immoveable property includes Agricultural Land Residential plots, Residential House, Flats/Apartments, Farm Houses.



Make a list of legal heirs.



Make a list of Legatee to whom you want to bequeath your property.

Consideration for – making WILL



The testator must consider not only the situation/ circumstances on the date of execution but also the situation and circumstances at the time of his death.



The testator must consider his experience and use his well-cultivated imagination.

Draft of Joint Will

Draft of Joint Will

This Will and Testament is made and executed by (1) Sh., son of aged years and (2) Smt., wife of Sh., aged years both residing at (hereinafter collectively referred to as 'Testators') at New Delhi on this day of

The Testators are making this Will in sound condition of mind and body and of their free volition and accord, without any pressure, undue influence or threat. This Will is reflecting their intention to bequeath their properties (both movable & immovable) held either in their own name or jointly with each other after their death.

The Testators are the lawful owner of immovable properties which are the self acquired properties of the Testators and they are possessed of and absolutely entitled to the said properties and are described below:

S.N	Description of Property	Reference document	Ownership
1	.	_____	Joint
2	.	_____	

The Testators are also lawful owners of movable properties including moneys in Savings Bank Accounts, Fixed Deposits, Shares, Jewellery, Money in Provident Fund, Pension Fund, Insurance Policies. Etc as detailed hereunder:

The Testators hereby declare that any mistake in the description or any omission in the above mentioned properties will not affect the dispositions hereby made and this Will shall apply to all their properties of whatsoever nature, wherever situate and whether standing in their name individually, with each other or jointly with anybody else.

The testators hereby declare that they have following legal heirs, who are our only children and to exclusion of any other individual who may directly or indirectly claim any right, title or interest in any of our properties:

- 1.
- 2.

The Testators hereby further declare that after their death all their properties mentioned above and all other such properties that they may have omitted to include above due to oversight and all other properties that they may acquire in future, either singly or jointly, whether movable or immovable shall vest and bequeath as mentioned hereinafter:

1. All the properties whether movable or immovable in the name of Sh. or any other property that may be acquired in the name of Sh. shall, after his death vest only in favour of his wife Smt. who shall be the sole and absolute owner thereof and free to deal with it in any manner whatsoever.
2. All the properties whether movable or immovable in the name of Smt. or any other property that may be acquired in the name of Smt. shall, after her death vest in favour of her husband Sh. who shall be the sole and absolute owner thereof and free to deal with it in any manner whatsoever.
3. After the death of both or survivor of the testators that is Sh. and Smt. all the properties, immovable or movable, singly or jointly held shall devolve absolutely and forever in favour of our children as under:

It is the wish of the Testators that the devolution be effected and will be executed in following manner to avoid any ill feelings amongst our legal heirs:

1. (a) The immovable property described at Sr. No. 1 above i.e. Flat/ Apartment/land bearing No. shall devolve upon in favour of my son Shri after the death of the last of testators.
(b) The immovable property described at Sr. No. 1 above i.e. Flat/

Apartment/land bearing No. shall devolve upon in favour of my daughter Shri after the death of the last of testators.

(c) The immovable Property bearing No. may either be sold off as may devolve upon our two children or shared equally in any manner as may be mutually decided by them after the death of the last of testators and proceeds distributed equally amongst the legal heirs

2. All the movables as may devolve be shared equally amongst the heirs after the death of the last testators as under:

- (i) All Shares, Debentures, Insurance Policy Premium & mutual fund investment etc. in favour of
- (ii) All jewellery, articles, valuables etc. in favour of
- (iii) All moneys invested as Fixed Deposits, Recurring Deposits, Saving Account in all the Banks in form of
- (iv) The money lying in PPF Account in banks/post offices as well as PPF deposited with PSU or any other company deposits in favour of
- (v) Pension received under any scheme from PSU in favour of

The testators appoint their (children) i.e. and as also the executors of the will.

It is the also wish of the Testators that after their death all concerned shall act in accordance with directions above and if any Probate is required to be obtained from any Court of law, the same shall be obtained in accordance hereof.

No other person shall have any right to claim any title over any of the properties of The Testators. The Testators hereby revoke all their previous wills, codicils and other testamentary documents made by them.

We, (1) and (2) I, have put signature hereunder in the presence of witnesses and in presence of each other.

Testator
Witnesses:

Testator

1. _____
(Signature, Name & Complete address)

2. _____
(Signature, Name & Complete address)

Do's and don'ts in making WILL

The testator should explain his background in the WILL. This should include 1) Religion 2) Family background 3) His/her profession/job 4) About marriage 5) Issues out of wedlock 6) Status and position of testator, his wife and children. 7) Place 8) Date

No personal comments on the legal heirs or representative.

Reasons for excluding the legal heirs from the legacy

Reasons for legacy to a person who is not a legal heir.

'Do's & 'Don't's while writing Will



The contents of the WILL should be concise. It is advisable not to make remarks/comments about relatives in the WILL.



If the testator does not want to give any share of his property to a relative, reasons for the same can be recorded in the Will to bring clarity.



WILL must contain the complete name, address, age and religion of the beneficiary. WILL must be dated.



The testator must put his full signature on the last page of the WILL. Initials or full signature desirable on all pages of the WILL.

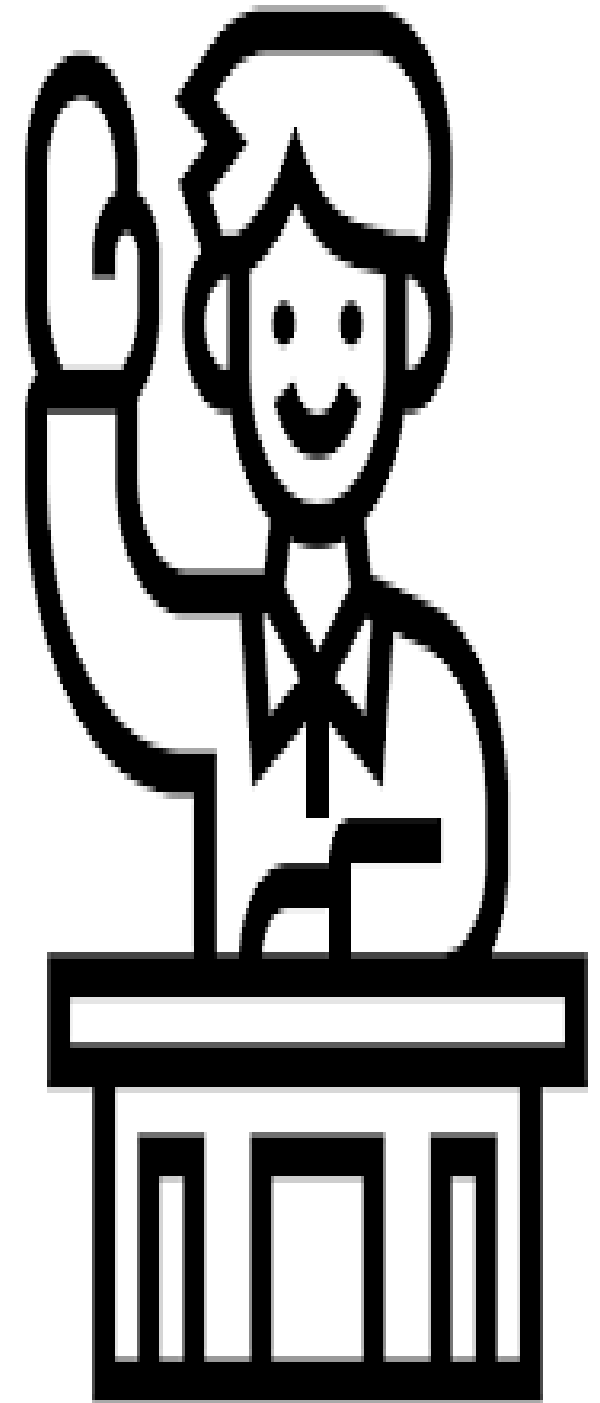
Residue clause

- A WILL should include a residue clause to take care of the property, which is not included in the WILL.



Who Should be the witness to Will?

- The law mandates that two persons sign the WILL as witnesses.
- The witness should be usually younger to testator as in the event of dispute, they are the only persons who can prove the WILL.
- The witness should be of sound mind.
- Witnesses need not read the WILL or need not aware about bequeath under the WILL.



Signatures of Testator and Witnesses on WILL



The testator should sign the WILL in the presence of the witness.



The witness should sign the WILL in the presence of the testator and each other presence.

Effect of death of witnesses

- Death of witness before the testator does not make the WILL invalid. However, if the witness dies before the testator a fresh WILL with new witness may be executed.

Change/Alteration/ Modification of WILL

- During the lifetime of the testator Legatee under the WILL cannot claim the same. The WILL takes effect after the death of the testator. Therefore, the testator can amend /alter/cancel the WILL as many times as he wants.



Why there is a need to amend/alter the WILL ?



There may be increase in the property



There may be decrease in the property



There may be death of legatee to whom property is bequeathed.



Testator has divorced his wife/husband or has remarried.

Method of amending or altering WILL

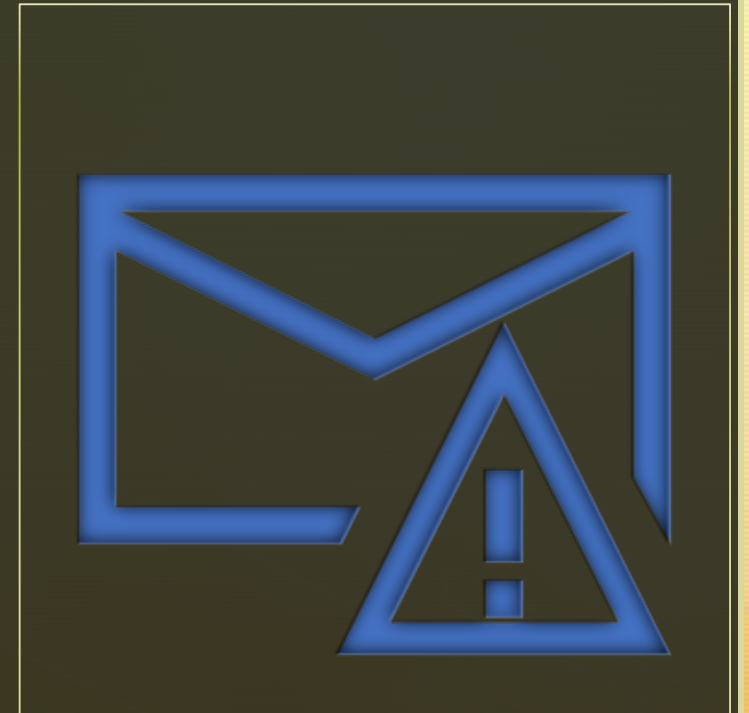
- Testator can make minor changes without cancelling the main WILL by making addendum which is called as CODICIL. All the requirements of WILL to be followed at the time of making CODICIL.



Corrections in the WILL

- after execution.

- Testator cannot make changes by erasing/inserting new clauses in the existing WILL. The best method is to re-write the WILL afresh by considering new circumstances.



Cancellation of WILL



Execution of Fresh WILL



Destroying



Marriage only for Christian/Parsi

Preservation of WILL



WILL Can Be Preserved With The Testator By Keeping in Bank Lockers.



Handing Over To Close Person or Relative.



Registering With Sub-registrar.

Registration of WILL



Registration is not mandatory



Advantage of Registration is that it is safely preserved.



Unnecessary temptation to amend the WILL be reduced.



Easily available upon the death of testator.



It is a proof that the WILL was in existence on the date of registration.

Frequently Asked Questions



Question : Under a WILL, the testator has bequeathed a diamond ring to his daughter. Can he sell or give away the diamond Ring during his lifetime without altering the WILL?



Answer : Yes, testator can do so without amending the WILL and consent of the daughter.

Frequently Asked Questions



Question : The testator has bequeathed his Flat in a multistoried apartment to the son. However, he sold the flat and invested the sale proceeds in Fixed Deposit Account. Can the son claim the said amount in Fixed Deposit?



Answer : No. Son is not entitled to the said amount..

Frequently Asked Questions



Question : Is it required that the one of the Witnesses should be a doctor ?



Answer : No, it is not required that doctor should be one of the witnesses to the WILL.

Frequently Asked Questions



Question : Can close relative of testator be a witness?



Answer : Yes. Your close relative can be a witness.

Frequently Asked Questions



Question : The testator has bequeathed/gifted property to attesting Witness. Whether the WILL and bequeath is valid?



Answer : If the testator is a HINDU, he can bequeath the property to attesting witness or appoint such attesting witness under the WILL.

By bequeathing property to or appointing the attesting witness under WILL, such bequeath or appointment or WILL are not invalid.

However, if the testator is CHRISTIAN/PARSI, then such a bequeath/appointment is invalid.

Frequently Asked Questions



Question : Under WILL can testator give property for charity or to a person who is not eligible to inherit the property.



Answer : Yes. Testator can bequeath his property for charity.

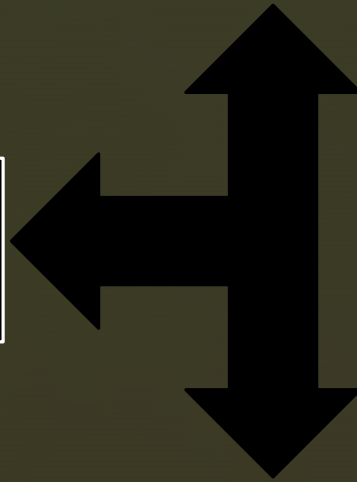
Types of Will

Special Wills

Single

General Wills

Joint



Registration of WILL



Registration is not mandatory



Advantage of Registration is that it is safely preserved.



Unnecessary temptation to amend the WILL be reduced.



Easily available upon the death of testator.



It is a proof that the WILL was in existence on the date of registration.

Deposit of Will in sealed cover



If the testator decides to register his WILL, he has to deposit the WILL in a sealed cover with his name to the Registrar of Sub-Assurances along with a statement of the nature of document.



Once the Registrar receives the cover and is satisfied, he will keep the sealed cover in his custody.



Stamp duty is not required to be paid on WILL. However, registration fees, as applicable, has to be paid by the testator.



If testator wants to modify / revoke the WILL, he may apply to the Registrar and if the Registrar is satisfied that the testator has applied, will return it.



On the testator's death, a person can make an application to the Registrar to allow to get the WILL or see the contents of the WILL.

Probate of Will



A Probate becomes mandatory when a Will is made / bequeathed property is situated in the jurisdiction of the Lieutenant-Governor of Bengal / High Courts of Judicature at Madras / Bombay.



The executor of the WILL has to initiate the probate process by filing Petition before a High Court / District Court having appropriate jurisdiction. In the event there is no executor, the Court can appoint an Administrator of the Estate.



After the receipt of petition, Court calls for objections from the legal heirs. A Notice is published to this effect in two leading newspapers, both English and regional with a specified period to report the objections.



On being satisfied that the Will has duly been executed, the Court will grant probate of the Will. The Court generally checks whether the Will has been duly executed as mandated under the law.



Getting a WILL probated is advisable when there are high chances of the WILL being contested in future on any ground.

Exception in case of Wills

General rule

The person who claims that a particular document is false is under obligation to prove such document is false.

Exception

In case of Will, the person who claims that a Will is genuine has to prove it.



Thank You

Deepak Dhawan

Adopted child's rights as legal heir

- ❑ According to the Hindu Adoption and Maintenance Act, an adopted child has no right of claim in the assets of biological parents. However, an adopted child may be entitled to the property of his biological parents if they write a WILL voluntarily allocating assets to the child.
- ❑ The adopted child shall be treated as a natural child of adoptive parents and therefore he has all the rights and liability as a biological child in the assets of adoptive parents. When an adoptive parent's biological kid is born after the adoption, they will each possess an equivalent ownership stake over the parent's estate.
- ❑ If the adoptions are deemed unlawful, the adopted child loses all coparcenary claims towards the adoptive parent's assets. If the adoptive parents are concerned about the legality of the adoption, they may execute a WILL in favour of the adopted child.