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(The FAQ is intended to give you an overview on how to draft a Will in a right manner and is for the persons covered under The Indian Succession Act, 1925 and for the properties located in India and the FAQ may vary depending on the religion of the reader.)

We all know we should write a Will, but it's one of those things that many of us never seem to get around to. In fact, it's estimated that a great number of people die without ever having made a Will.

Though it is not mandatory to make a Will, not writing a Will can mean anxiety and financial concerns for your family or dependants after you've gone. Without one, you can't be sure that your money and property will be passed on according to your wishes & to the rightful owner.

Q1. What is a Will?

A Will is a legal declaration by a person of his/her intention and desire of how his/her asset is to be dealt with or disposed of after the person's death. A Will can be changed at any time or withdrawn during the lifetime of the person making the Will (even if it is registered). A Will intends to come into effect after the death of the person.

Q2. Why should I make a Will?

- You can put your affairs in order and leave clear instructions to provide for your spouse or civil partner, cohabite and family.
- You can choose who should be your executors.
- You can make proper financial arrangements for your children if they are under 18 on the date of your death, as well as appointing a guardian to look after them.
- To reduce or eliminate Inheritance Tax (IHT). Properly made Wills and associated planning can save substantial taxes in IHT where applicable.
- To make special provisions for children who may have health, matrimonial or financial issues.
- To minimise the effect of long-term residential care ofthe family fortunes.
- To avoid disputes within the family.
- To keep provision for charities or friends, if desired.
- To provide for family pets, if desired

You still have to decide where you stand on these issues before making your Will. It is also good to speak to your spouse and decide if you are making a single Will (just you) or a mirror Will (similar Wills for you and your partner).

Q3. What is a Codicil?

A Codicil is a document made in relation to a Will, which explains, alters or adds to what is in the Will. A Codicil is an extension of the Will and forms a part it. There may be one or many Codicils, if the person making the Will has several revisions over time. Suggestion – You should make the codicil only for the purpose if you have to make an explanation to your Will, in case there is any amendment in the Will, then instead of a Codicil, you should make a new Will (and revoking/ nullifying all earlier Wills and Codicils).

Q4. What makes a valid Will?

You should be at least 18 years of age and of sound mind in order to prepare a Will and it should be made with your free consent. The Will itself must have directions for disposal of your asset upon your death. The Will must be signed by you in the presence of at least two witnesses who must also sign as witnesses. (There are certain exceptions for certain religions.)

A person must be mentally alert when he makes and signs a Will. A person must also be free of undue influence, persuasion or force when the Will is made.

Q5. What are the essentials of a Will ?

The essentials of Will document are:

- All necessary identifiers of the Testator should be mentioned in the Will. This includes but not limited to Name, Age, Religion, Address, PAN card/ Passport Number etc.
- A declaration made by Testator to the effect that the present Will is his/her last Will and all other earlier Wills and Codicils are hereby revoked.
- Clear information about who are the beneficiaries and what is their relationship with the Testator as well as what assets will be given in what proportion to which beneficiary.
- Specific special clauses which will make a specific beneficiary eligible or non-eligible to inherit the share of the assets of the person (Testator) and conditions, qualifications for the same.
- Mention about the Will to take effect after the death of the Testator and if necessary, also mention about who will be responsible for the execution of the Will (Executor's name).
- A Will must be attested by minimum two persons as witnesses who shall put their signatures in presence of the Testator and the Testator should sign the Will in the presence of the witnesses. Beneficiaries cannot be the witness.

Q6. Who are the parties to a Will?

- Testator – who makes the Will.
- Executor is named by the Testator, who makes it sure that the assets are distributed as per the terms of the Will. (Optional)
- Beneficiary/ies is/are the person/s to whom the benefits are passed through the Will.
- Witnesses – 02 (Two).

Q7. What should I do about the Assets jointly owned by me with any one?

You can distribute the asset only to the extent of your share in the joint holding of the assets.

Q8. Can I name an ancestral immovable property situated in India?

You should not bequeath/mention any ancestral property/assets not owned by you, unless such property or a share in such property has devolved upon you / come to your possession legally by following due process of law.

Q9. Can I name an immovable property situated outside India?

No, you can not bequeath/mention the details of the Immovable properties held outside India. The properties held and owned outside India are governed by the laws of that country where the property is situated and hence, it is advisable to prepare a separate Will for the assets held outside India in accordance with the laws applicable in that country.

Q10. Which law governs the respective laws of Religion, as far as Wills are concerned?

In India, Wills are governed by respective laws of the Religion prevailing in the country, while laws of Hindu, Buddhists, Sikhs, Jains, Parsis and Christians are governed by the Indian Succession Act, 1925 and Mohammedans are covered by the Muslim Personal Law only.

Q11. Witnessing of WILL.

The Will is to be attested by two or more witnesses. Your Will shall be considered properly attested only if the witnesses sign it in your presence. However, it is not necessary that both the witnesses sign the Will at the same time. The Beneficiary of the Will cannot be the witness.

Also, the witness should have seen you sign the will or you must at least acknowledge in his presence that you have signed it. The Indian Succession Act does not specify any particular form of attestation. “However, in most cases, if the will is not attested properly, it may stand null and void.

Q12. Do my witnesses have to know what I wrote in my Will?

The law only requires that two witnesses, not related to you by blood or marriage or to any of your devisee(s), watch you sign and date the Will and that they know you have said it is your Will.

Q13. How can a Will be revoked or amended?

A Will can be revoked, changed or altered by the testator at any time when he is competent (essentially of sound mind) to make a Will. A person can revoke, change or alter his Will by executing a new Will, revoking the earlier Will, registering the new Will (if the old Will is registered), destroying the old original Will or by making a Codicil.

Q14. Can a person make more than one Will?

A person can make a Will anytime and any number of times. The most recent Will is the one that takes effect. Explicitly cancelling the previous Will is not required.

Q15. What are the disadvantages of preparing a Will?

- Possible lack of privacy, if you register your will.
- Where circumstances change after preparing the Will but the Will has not been updated to reflect these changes. In case you die before updating the Will, asset may pass in a manner that you would not have intended, given the changed circumstances.

Q16. Does a Will have to be on Stamp Paper?

No, it does not. The Will can be executed on plain paper.

Q17. Does a Will have to be registered and what is the Stamp duty payable on registration?

No, it does not. However, it is advisable to register the Will at the Sub Registrar office to add to its authenticity.

There is no stamp duty payable on Registration of the Will. However, applicable registration charges have to be paid.

Q18. Does a Will have to be prepared by a lawyer? Or do I have to use certain ‘legal’ language in my Will?

No, it does not. However, it is advisable to get your Will vetted by your lawyer. There is no specific legal words required to make a Will valid. It is however, important to use simple, clear and straight-forward language.

Q19. Passing on property to unborn people

Unlike trusts, wills have no place for unborn people. Any property bequeathed to a person yet to be born will be considered invalid. However, this does not mean that the property you leave will necessary lapse. Though the person may not exist when the will is drawn, the validity depends on whether he exists when the will becomes operational.

Q20. What are the consequences of not writing a Will?

If you die without making a Will, you are said to have died intestate- and there are rules to determine, in that case, who gets what. If you die without a valid Will:

- Your spouse or civil partner may not be adequately provided for.
- The intestacy provisions may give part or all of your estate to someone you would not want to benefit and may not adequately provide someone dear to you.

Q21. When do intestacy rules apply?

If you die without having made a Will, the intestacy rules applies. If that happens, the administration of your affairs after death will be your closest surviving relative.

Q 22. Does an adopted child have any rights to inheritance?

An adopted child is deemed to be the legal child of his or her adoptive parents and has exactly the same inheritance rights as the adoptive parents' , other (natural) children, but adoption removes any rights he or she has had by law to his or her natural parents' estate.

Q23. What are the reasons which can make a Will invalid?

There are numerous reasons why a Will can be defective. Some of these defects like the lack of witnesses,undue influence, lack of testamentary capacity, uncertainty, illegal and immoral conditions, can make a Will invalid.

Q24. What is the definition of testamentary mental capacity?

There is no clear line between a person being capable of making a Will and being incapable of doing so. The definition of testamentary mental capacity requires that you understand that you are making a Will, know what you own and that they will distribute your property on your death. You must also be aware of those who might have claims or an expectation of inheriting on your death. If there is a dispute later, medical evidence would be required to prove that this was the case (or not) at the time the Will was made.

Q25. Which assets can be included in a Will?

Types of Property and Assets included in a Will:

a) Real property, such as real estate, land, and buildings

b) Cash, bank accounts, and money market accounts, etc.

c) Intangible personal property, such as stocks, bonds, and other forms of business ownership, as well as intellectual property, royalties, patents, and copyrights, etc.

d) Unproductive property, such as valuable objects like cars, artwork, jewelry, and furniture, etc

Q26. If a nominee has been declared can a Will transfer an asset to someone else?

A nominee, strictly speaking, is not a legal heir. A nominee is someone who takes care of your asset after your death until it is transferred to the real legal heir. If you don't have a Will, the legal heir is determined by law and could stake a claim from the nominee and disputes could arise. A Will overrides a nomination.

Q27. When is a Will valid?

The Will is valid from the moment your Will is signed, witnessed and dated. There is no law requiring that Wills must be registered before death. **But a registered Will has the least chances of having any legal complications after the death.**

Instead, it is up to you to find a safe place for the Will, to put it there and to let your executors know where it is. Don't forget to tell your executors if you move it or destroy it.

Never keep your will in a bank safety deposit box. When someone dies, the bank can't open the deposit box until the executor gets probate (permission from the court to administer your affairs) – and probate can't be granted without the will. Always make sure that your will can be accessed without probate.

Q28. Should a Will be up to date?

As time goes by and your situation develops and changes, you should keep your list of assets and liabilities up to date. Your objective should be to make things as easy as possible for your executors and family when you die.

Significant changes that could affect your Will include:

1. **Marriage**
2. **Divorce or separation**
3. **Having children or grandchildren**
4. **Buying or selling a large asset such as a house**

Q29. What are the important information for relatives and executors upon your death?

Write down all this information in one place and then tell your relatives and/or executors where to find it so that everyone knows your intentions in the event of your death.

(i) Personal information: your name, address, postcode and telephone number.

(ii) Where your Will and other important papers are located and the date of your latest Will (perhaps with a copy of your Will).

(iii) People to contact following your death.

Give the details (name, address, telephone number) of:

(i) Relatives and Friends

(ii) Your solicitor

(iii) Financial contacts (Bank, building society), and account type and number;

(iv) Accountant

(v) Tax advisor

(vi) Insurance companies/ broker.

Q30. Who is an executor?

An executor is a person named in the deceased's Will as responsible for administering an estate.

An executor is entrusted with responsibility for winding up someone's earthly affairs. Essentially, an executor is charged with protecting a deceased person's property until all debts and taxes have been paid, and seeing that what's left is transferred to the people who are entitled to it.

Executor can keep the custody of the Will and take the desired actions at the right time.

Q31. What are the duties of an Executor?

Executor's duties are not mere formalities; there is a great deal of work involved. He is responsible for:

(i) Collecting in all the assets of the estate;

(ii) Dealing with the paper work and calculations;

(iii) Paying all the debts, liabilities and taxes and the various other expenses;

(iv) Distributing all the property that remains in the estate after paying all debts & liabilities of the deceased;

(v) **Set up an estate bank account;**

(vi)**Handle day-to-day details;**

Q32. Can Guardians be mentioned in a Will?

A will can name a "personal guardian" to care for minor children if both parents are deceased or if the surviving parent is unable to care for the children. The personal guardian will have legal guardianship over the minor children until they reach the age of 18. Because minors cannot own property, it is also important to select a person to manage the children's property.

If the name of guardian is not so mentioned in a Will then it is upto the Court to decide who the most suitable person is.

Q33. Who are Trustees?

Trustees are people who legally own and administer property for the benefit of others (called the beneficiaries) under the terms of the trust and in accordance with the law. For example, a trust arises where property is given to children under the age of 18. The trustees of the Will or deed hold the property for the benefit of the children until they reach the age of 18 or older. The terms on which the property is held in trust are set out in the document setting up the trust (which can be a Will) or by various Acts of Parliament. Trustee can be a person who is allowed to do certain tasks but not able to gain income.

Q34. In which situation is an administrator appointed?

An administrator is a person appointed by the court to administer the estate of someone who died without leaving a Will.

He is appointed to settle the debts, pay any necessary taxes and funeral expenses of the deceased, and distribute the remainder according to the procedure set down at law.

Aadministrators act as officers of the court because they derive their authority from court appointments. They are also considered the fiduciaries, or trusted representatives, of the deceased. As such, they have an absolute duty to properly administer the estates solely for its beneficiaries.

Q35. When is an Administrator appointed?

An Administrator is appointed because the deceased died intestate. If you are the relative responsible for administering an intestate, you may have to apply to the Probate Registry for the letters of administration. The procedure is the same as executors applying for a grant of probate.

If the chosen executors are unable or unwilling to apply for the grant of probate, the person entitled to apply for letters of administration makes the application to the registrar in the same way , but the grant of representation is then known as 'letters of administration with Will annexed'.

Q36. What does the term 'probate' mean?

The term 'probate' (or 'probate of the Will') means a legal document issued to one or more people ('the executors') by the Probate Registry, authorising them to deal with an estate.

Probate is the process by which the court establishes that a will is **valid**. It also confirms the appointment of the person named as executor in the **will**.

Q37. How does one apply for a probate?

The application for a probate has to be made in writing to the competent court (a pecuniary jurisdiction may require a higher court to issue a probate for high-value immovable assets) through a lawyer.

The court may impose a percentage of assets as a fee to issue a probate.

Q38. When does the court grant probate to the executor named in the Will?

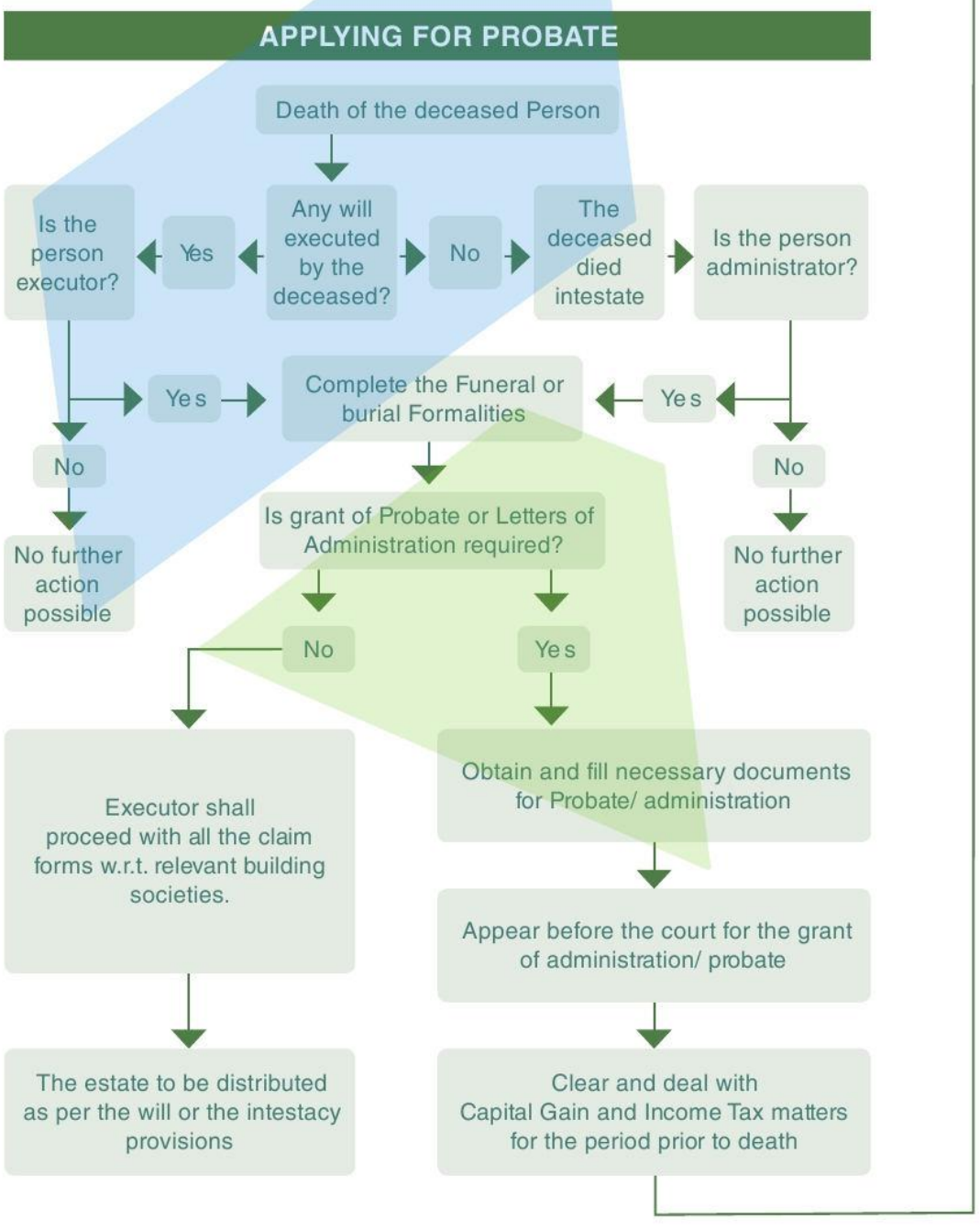
Probate is the process through which someone gets the court's permission to deal with a deceased person's estate — collecting up all the assets, paying off any debts and distributing the assets to the beneficiaries who are entitled to them. The Probate is granted in the following manner:

a) The executors (the persons responsible for dealing with the estate) are usually named in a Will. They can apply to the Court for a 'grant of probate'.

b) Once the Court is satisfied that the Will in question has been validly executed, the court will grant probate to the executor named in the Will. The executors are asked to sign an oath confirming the information they have provided and their commitment to deal with the estate in a right and proper manner.

c) The grant of probate (or letters of administration) can be shown to anyone who is asked to release any money or other assets belonging to the deceased's estate.

You can consult your lawyer for grant of Probate.



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It is our constant endeavour
to create effective and useful awareness.

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