

## WILL – A TESTAMENT<sup>1</sup>

By Charusheela Vispute

### 1. What is a Will?

A Will is a legal declaration of intention of a testator<sup>2</sup> with respect to his property which he desires to pass on after his/her demise. Will comes into force only after the death of a testator. During the lifetime of the testator, Will has no effect. A testator can change the Will any number of times during his lifetime.

### 2. What is a Codicil?

A Codicil is a written instrument or document prepared in relation to an existing will to modify, alter or add any provision of the existing Will.

### 3. Who can make a Will?

Every person of sound mind, not being a minor is entitled to dispose of his property by Will. A testator should be able to understand the content of the Will.

### 4. Which property can be covered under Will?

A testator can bequeath all properties owned by him by way of Will. All details of the properties should be mentioned clearly to avoid future disputes.

### 5. What is a Residuary clause?

It is essential to specify “Residuary clause” in a Will, which refers to any other property, movable or immovable, owned, received as gift or inherited by testator but not specifically mentioned in the Will or which is not in existence at the time of execution of Will or which is not known by testator when the WILL was executed. The bequest of such residuary assets should be specifically mentioned in the Will to clear any uncertainty that may arise in future related to residual assets.

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<sup>1</sup> This article reflects the general work of the author and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

<sup>2</sup> A person who makes a Will. A female making a Will is known as Testatrix

## **6. Who is a Beneficiary?**

Beneficiary is the recipient of benefits stated in the Will. A beneficiary need not be a relative. If a beneficiary dies before the death of the testator, the bequest lapses. Hence the testator should make such arrangement in the Will that in case first beneficiary dies before testator, the property shall be bequeathed to second beneficiary. Hence, more than one beneficiary shall be mentioned in the Will. If testator intends to bequeath his asset to minor child, he can appoint guardian for minor child to manage the property till such child reaches the age of majority.

## **7. Is there any format of a Will?**

There is no specific format of Will but it should be specific and clear with respect to intentions of the testator to avoid any ambiguity and confusion in future. If the testator had executed any Will(s) in the past, the same should be mentioned in the Will. A statement declaring that all previous Wills, codicils are revoked, and this Will is a last Will, is enough to revoke previous Wills.

## **8. Who is an Executor?**

A testator can name any person to act as an<sup>3</sup>executor. A testator can appoint one or more executors. After the demise of testator, the executor must dispose of assets of testator to the beneficiaries in such manner as enumerated in the Will. Ideally, the testator must sign on every page and at the end of the Will. It is important that the testator must execute the Will in front of each witness and that each witness signs in front of testator.

## **9. Is registration of Will mandatory?**

Registration of Will is not compulsory and depends on the choice of the testator. In case Will is registered, all subsequent codicils should also be registered. Registration is advisable as there can be possibility that the Will can be challenged by legal heirs after the death of the testator.

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<sup>3</sup> A person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided.

### **10. Is doctor's certificate mandatory?**

It is recommended just as an extra precaution that the testator should obtain doctor's certificate on the date of execution of Will, certifying that the doctor had examined the testator and the testator was in sound mind and capable of disposing off testator's assets through the Will.

### **11. Which law is applicable for making of Will in India?**

The Indian Succession Act, 1925 is applicable to all Wills and Codicils of Hindu, Buddhist, Sikh, Jain and Christian. However, Mohammedan can make Wills according to the Muslim Law.

For any feedback or response on this article, the author can be reached on [charusheela.vispute@ynzgroup.co.in](mailto:charusheela.vispute@ynzgroup.co.in).

#### About Charusheela

Charusheela Vispute is experienced in litigation and non-litigation, having specialisation in property and testamentary matters. By qualification she is Bachelor of Arts and Bachelor of Law from Mumbai University.