

How to create a foolproof will for smooth inheritance

Seek professional help from a lawyer or an institution in case of complex inheritance matters

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Delhi-based Sachin Chopra, 46, suffered a tough time when his father died intestate during the covid-19 years. He ran pillar to post to get his father's assets transferred in his name. His mother had also passed away, but she was still the nominee in some of his father's investments. It made the process even more complex.

"This experience made me realize how important it is to create a will. It took me more than two years to get all assets transferred in my name," says Chopra.

There is no official data on how many people have created a will in India. In an independent survey of 467 people, online will-making platform Yellow found that 80% of the respondents had not created a will. Another 10% had only created a rough draft. Surprisingly, over 60% of the respondents believed being a nominee was akin to being a legal heir.

Chopra has created a will himself, which very few do. "Will creation is not as complicated as it seems. I wrote a comprehensive will of three pages and got it attested by four witnesses at my home itself, even though only two witnesses are required," says Chopra.

Even a hand-written will on a blank paper attested by two witnesses is considered legal. One does not have to register it at the sub-registrar's office. However, not everyone would be capable of drafting a will on their own. There are nuances depending on how much wealth and assets one holds.

"Lawyers, tax consultants, chartered accountants, company secretaries and in some cases even notary public can draft a will, but the significance of the testamentary document cannot be undermined as it demands legal knowledge and exposure to succession laws," says Rajat Dutta, founder and initiator at Inheritance Needs Services Pvt. Ltd.

Find a trusted professional

Online will-making platforms such as Yellow, Willini and No Grey have made the process affordable and accessible. Banks too have group companies running will-making services, such as SBI-Cap Trustee's MyWill Services. "We charge ₹5,000 for offline will services. Online charges are just ₹2,500," says Meenal Purswani, head, legal, risk and compliance, SBI-Cap Trustee.

Pune-based Madhav Samant got his will done via an online will-making platform. "For me data privacy was most important. I thoroughly ensured it before going ahead with the platform," says Samant. "I opted for a customized option, in which my draft was reviewed by a lawyer. Later on, they appointed a person physically who helped me with registering the will at the registrar's office. I paid ₹20,000 each for me and my wife," he added.

Samant also got a power of attorney (PoA) done so that in case he becomes incapacitated, a PoA in the name of his wife would ensure his funds remain accessible. "It cost me an additional ₹10,000," he says.

Online platforms are convenient, but one has to be cautious about it.

"A will is a personalized document. One size will not fit all," says Dutta of Inheritance Needs.

"A good lawyer will verify your documents instead of creating a will on self-declaration. I have seen instances where

Hassle-free inheritance

Understand challenges involved in the execution of the will to create a foolproof document for hassle-free succession planning



SACHIN CHOPRA (44)

Location: Delhi

Executor/
beneficiary: Wife

"I drafted the will myself at home and have no plans to get it registered."



MADHAV SAMANT (58)

Location: Pune

Executor: Wife
beneficiary: Wife and children

"I got it created by an online platform but opted for their offline services also."



ANSHUL GOEL (38)

Location: Mumbai

Executor: Wife & 3 relatives if wife is no more
beneficiary: Wife & child

"I have included a range of scenarios in a laggard manner in the will."



NACHIKETTA SATHPATHY (73)

Location: Gurgaon

Executor: Eldest two sons
beneficiary: 3 sons

"My sons are aware of the will but not of what I've included in it."

TAX-EFFICIENT SUCCESSION PLANNING

- ▶ Activating an HUF by the eldest son
- ▶ Adding the HUF as one of the beneficiaries in the will by parents

Caveat: HUF wealth belongs to all members

HOW TO CREATE A WILL

- ▶ A hand-written will in a paper attested by two witnesses is legal.
- ▶ REGISTER to reduce risk of hassles in succession.
- ▶ INCLUDE as many scenarios as possible in inheritance.
- ▶ APPOINT multiple executors in an order.

APPROACHING A PROFESSIONAL

- ▶ It helps if you cannot draft your will yourself.
- ▶ Look for an experienced lawyer in succession laws.
- ▶ A lawyer should verify original documents.
- ▶ Self-declared data could be wrong.
- ▶ Online will-making platforms create standard wills.
- ▶ Opt for their offline services to connect with affiliated lawyers.

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a person may say he has 50% ownership of a property, but the property documents show other relatives are involved," he adds. "Reliance on detailed documentation supporting the will at the drafting stage itself is critical, and dependence on self-declaration could prove disastrous."

Minor beneficiaries

Be very careful about the language of the will and consider all possible scenarios when writing it. Many people tend to will all their assets to one beneficiary, mostly their spouse. What if the husband and wife both pass away while the children are still minors?

That is what made Anshul Goel include 11 scenarios in his will. "Some scenarios are like this—if the wife dies, then the husband gets everything; if the husband dies, then bifurcation between wife and parents," Goel says.

He has also appointed five legal guardians in an order in case his spouse and he both die. "I have included specific instructions for them such as using the existing bank account to fulfil the needs/wants and desires of my child(ren), sending them to the best of the boarding schools in the country, and giving all money to them when they turn 25," Goel says.

The language should be such that wealth accumulated after creating a will should find a place in it. "A will can always be updated with a codicil or addendum, but one will have to bear the cost all over again, more so in the case of a registered will," says Purswani of SBI-Cap Trustee.

Foreign assets

If you have assets in one or multiple foreign countries, it cannot be part of your Indian will. You will have to create

separate wills for foreign countries.

"Such people are advised to create a living trust because executing a composite or multiple wills in different jurisdictions is a complicated, time-consuming and expensive process," says Pritika Kumar, co-founder of No Grey, a Gurgaon-based online legal platform involved in making wills and trusts.

For families whose children are studying abroad (or are about to), careful planning can help optimize their portfolio and allow wealth-creation overseas.

"NRIs (non-resident Indians) are treated differently under (Foreign Exchange Management Act), and broadly are allowed to remit more monies outside India, compared to a resident Indian," says Rishabh Shroff, head of the private client team at law firm Cyril Amarchand Mangaldas, specializing in succession planning.

Naming an executor

Appointing an executor should be well thought-out.

"Generally, people appoint their spouses as a sole executor, but executors should be fairly young because they should reasonably be expected to outlive you," Shroff adds. "We advise having a spouse as the first-order executor, followed by children as the joint executor."

While preferences should be given to the immediate family as executors, in some cases people do consider using family confidants, chartered accountants or lawyers as executors.

While a trust is advisable if large wealth is involved, a Hindu undivided family (HUF) can be considered, too.

"If aged parents want to will away their wealth, the eldest son can activate his HUF, being its *karta* (the senior-most male ascendant as the head of the

family)," says chartered accountant Prakash Hegde. "Parents can include the HUF as one of the beneficiaries in the will. It would be a separate entity for tax purposes."

To register or not

Creating a will is just the beginning. Executing it after the one who has created it (testator) is gone could be challenging. The testator should ensure in her lifetime that the will is foolproof.

Even as a handwritten will on a white paper is legal, some financial institutions may ask for a registered will.

"A will need not be registered according to the law and it can still be executed. However, in one of my client's cases, during transmission of mutual fund units, a notary will was not accepted," says Milan Pandya, a Mumbai-based personal finance consultant.

"We had to go through the succession certificate process, which was a time-consuming and costly affair. The client paid roughly ₹1.5 lakh to obtain it, including court and lawyer fees."

Even registered wills can be contested. The last will, or the most recent will pre-demise, will be the valid will whether registered or otherwise.

In such scenarios, a probate will be needed. Probate is a process whereby the legal system certifies the legitimacy to the will with adequate due diligence and after hearing the aggrieved parties.

"You may have a registered will, but if the testator creates an unregistered will later, it will hold supremacy. In such situations, a probate will be required," says Dutta of Inheritance Needs.

If the deceased owned immovable assets or properties in Mumbai, Kolkata or Chennai, a probate is a must for the beneficiaries.

Will creation is a simple affair. But seek professional help from an experienced lawyer or an institution if complex inheritance matters are involved.