



How conditional wills could protect your family's future

Apart from choosing how your wealth will be inherited, you can set the conditions too

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Ayaan thought he had done everything right—he had divided his wealth equally between his wife and son, and named his wife as the executor of his will. What he never imagined was that both of them would die in an accident. With his wife not around to execute the will, the document was meaningless, and a chaotic legal process to implement the will.

When Aarna turned 18, she inherited her father's fortune—a dream for most teenagers. But with sudden wealth came reckless spending, and within a few years she was left with nothing.

Ansh and his wife were careful planners, but covid forced them to confront something they had previously avoided—what would happen to their young daughter if both of them weren't around? They realised they couldn't afford to leave things to chance.

These scenarios are fictitious, but entirely possible since life throws curveballs when we least expect them. Even with the best intentions, a simple will can become useless if things don't go as planned. That's where a conditional will can make all the difference.

Conditional wills

A conditional or contingent will takes effect only when specific conditions are met. Rajat Dutta, founder of Inheritance Needs Services, explains that such a will allows the testator—the person drafting the will—to anticipate potential changes in family dynamics. "They can include conditions either as precedent or subsequent to the bequest. In some cases, the inheritance may be tied to the beneficiary achieving certain milestones," Dutta said.

For instance, a parent can stipulate that a child inherits the family business only after completing their management studies, not otherwise. Similarly, a father might condition his son's inheritance on getting married.

However, these conditions must be reasonable and lawful. "The terms in the will must be practical and not overly burdensome. If they are illegal, the will can be deemed void," said Satyajeet Desai, senior advocate at the Gujarat High Court.

Safeguard the future

The pandemic made Anshul Goel, a management consultant in Mumbai, realize that families can suffer multiple fatalities in quick succession. He therefore structured his will to ensure someone from his extended family could step in as the executor, the legal guardian of his minor daughter, or as a beneficiary if needed.

"One condition in my will is that if my wife and I are no more, the three executors I've chosen will carry out the will. I selected them carefully, ensuring that the chances of all of them being together under one roof are slim."

Goel also put in specific conditions on how and when his daughter could access her inheritance. "I don't want her to receive the entire amount at 18. That much money at such a young age could spoil her. Instead, I've instructed the legal guardian to release small amounts periodically for her day-to-day needs. She'll receive the remaining funds only when she turns 25."

Vishal Mehta, founder of death-tech startup Mitt Arv, has similar conditions for his primary inheritors. "If I pass

Planning for every possibility

Conditions make the will comprehensive but pose practical implementation challenges; choose executors wisely.

What is an in-terrorem or no-contest clause*?

If a beneficiary contests the will, they forfeit their share of the estate

Does it help?

- ▶ **BENEFICIARIES** can still contest the will
- ▶ **IF** a court determines the will is valid, it must be followed exactly
- ▶ **THIS** means the contesting beneficiary will receive their share
- ▶ **THEREFORE**, the clause does not prevent disputes

*Also called no-contest clause



ANSHUL GOEL
Management consultant
(Joint will with wife)

Wealth distribution

- ▶ **Husband or wife dies**
 - ↳ Spouse, respective parents inherit
- ▶ **Husband and wife die**
 - ↳ Kids, parents of both inherit
- ▶ **Spouses and kids die**
 - ↳ Parents inherit
- ▶ **Spouses and parents die**
 - ↳ Only kids inherit
- ▶ **No primary legal heirs alive**
 - ↳ Goes to siblings, PMNRF

PMNRF: Prime Minister's National Relief Fund



VISHAL MEHTA
Founder of a death-tech startup

Wealth distribution

- ▶ **Husband dies**
 - ↳ Wife, parents, and son inherit.
- ▶ **Both husband and wife die**
 - ↳ Son and parents inherit.
- ▶ **Husband and parents die**
 - ↳ Wife and son inherit.*
- ▶ **Both couple and parents die**
 - ↳ Son inherits
- ▶ **No primary legal heirs alive**
 - ↳ Nephews and nieces inherit

*Nothing to wife if she remarries while son is minor

How to execute a conditional will

Example: Son to receive the estate at age 25

Where will the money be held until then?

- ▶ **INITIALLY**, it will go to the nominee
- ▶ **THE** executor should place it in a suspense bank account, if bank allows
- ▶ **OR** keep it until the son turns 25

What if the nominee/legal guardian/executor spends the money?

- ▶ A legal battle will follow; the resolution may take years

Note: Be aware of practical challenges when including conditions in the will. Consider compensating the executor for their role in executing the will.

Other conditions

- ▶ **IF** one or both parents die, child gets wealth after graduation
- ▶ **IF** one or both parents die, child inherits business on completing an MBA (for family-run businesses)
- ▶ **TITLE** of property can't go to child until the spouse or parents are alive
- ▶ **IF** the property is sold, receipts must be shared with spouse or parents



PRANAY BHARDWAJ/MINT

away and my wife remarries while our child is still a minor, all of my wealth will go solely to my son. If he is an adult, the assets will be divided between the two. The distribution will change if my parents are alive." Mehta's will also accounts for the possibility of divorce.

Balance family dynamics

For married individuals with a spouse, children and parents, it's essential to prioritize the well-being of both the spouse and parents before transferring wealth to the child. "You can state that the wealth will go to my child subject to the life-time interest of my spouse and parents. Until then, the beneficiaries cannot have a clear title to the assets," said Dhruv Chopra, managing partner, Dewan PN Chopra & Co.

"Another important condition could be that if a child wants to sell a property, they cannot do so without their mother's approval and a promise of a portion of the proceeds," Chopra added.

"One of my clients included a condition to foster interdependence. He bequeathed the property where his wife lives to his parents and vice versa, ensuring they maintain a cordial relationship," he added.

Many people also wish to contribute to society through their estates. "We advise such individuals to include conditions that require the next generation to donate a specific amount to charity for a set period or as a one-time contribution," Chopra said.

Appoint trusted individuals

It's also essential to plan for the possibility of incapacity. "You can specify that your spouse or children are allowed to withdraw a certain amount if you are alive but unable to manage your affairs," said Chopra.

"However, be careful not to overextend this provision," he cautioned. "The goal is to empower one or more individuals to manage your responsibilities during such situations."

Parents nowadays also consider scenarios in which their children marry later in life or not at all. "They should also account for the possibility of their children marrying partners who already have children from previous relationships," Dutta added.

Plan for uncertainty

Even with all of this, it's possible to overlook various scenarios. However, you can make subsequent changes, even if the will is already registered.

You also need to be mindful of prac-

tical challenges. For example, you may want your child to inherit your wealth when he turns 25. Where will the money lie until then? Ideally, the executor will ensure it remains with him or in a suspense account, but a nominee, legal guardian or even the executor could spend it all. While the beneficiary can file a lawsuit, resolution can take years. Choosing the right executor is therefore critical. Consider compensating him or her for executing the will.

Should you include an in-terrorem clause?

Some lawyers advise adding an in-terrorem clause, which says any beneficiary who contests the will forfeits his or her share of the estate. However, Vivek Sadhale, co-founder of LegaLogic and GetWillDone, said such a clause does not offer more protection.

Death is inevitable, but unpredictable. A conditional will that takes into account various potential scenarios can facilitate effective estate planning. It's best to seek professional help to draft or review your will.



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