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## India: Gifting Real Estate

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Gifting of immovable property is a popular mode of transferring the ownership and possession of one's property in favour of another without any consideration or money. A 'gift', defined under Transfer of Property Act (TPA), 1882, is often the mode of transfer between family members. However, a gift can also be validly made in favour of a person who is not a family member of the donor.

### 'Gifting of Property'

A donor can only gift property which he/she owns at the time of making the gift. In other words, gift of a property which the donor is yet to fully acquire/own in future or is not in existence, would not be legally valid. Parties should ensure that the Gift Deed contains a clear and unambiguous description of the property being gifted to avoid future disputes. Also, if the donor plans to gift an undivided share in a property which he/she jointly owns with one/more persons, the Gift Deed should clearly mention the percentage of undivided share in the property which is to be gifted.

It is also important to determine whether the property in question is a coparcenary property or a self-acquired one. While a coparcenary property refers to property that is acquired or inherited by the donor from his ancestors as per the rules of Hindu Mitakshara law, the self-acquired property is bought by utilizing one's own funds.

For a self-acquired property, the owner would not be required to take prior consent from anyone before making the gift. However, this is not the case with gifting one's share in a coparcenary property. It is now settled law that in case one wishes to make a gift of his/her undivided share in a coparcenary property, he/she is first required to obtain prior consent from all other coparceners (i.e. other family members who also have an undivided share in the same immovable property which was acquired or inherited from a common ancestor). A gift of an undivided share in a coparcenary property would be valid only if all coparceners have accorded their consent.

But remember prior to execution of the Gift Deed, the donor should also disclose to the donee any debts or liabilities that might exist on or against the property which is to be gifted. This is a crucial disclosure which would enable the donee to take an informed decision as to whether or not he/she wants to accept the gift, given that the donee stands to become personally liable for all the debts taken by the donor against the property at the time of the gift.

### Making a Gift Deed

Under Transfer of Property Act, a gift of an immoveable property is considered valid only if the transfer of such property is affected by way of a written document that is properly executed. Oral statements or promises or mere delivery of possession of an immoveable property, without executing a valid written instrument, are not enforceable and are insufficient for transferring any title of ownership in favour of the donee. Hence, the parties are required to enter into a proper Gift Deed which should be signed by both parties and attested by at least two witnesses.

Also, a gift is not considered complete until and unless it has been accepted by the donee or on behalf of the donee. All these steps should be completed during the lifetime of both donor and donee.

### Stamping, Registration and Mutation

Even though a gift of immovable property does not involve payment of any money by the donee to the donor, applicable stamp duty and registration fee is required to be paid. The rate of stamp duty payable on a Gift Deed is the same as that which is payable on a Sale Deed/Conveyance Deed. Further, a Gift Deed must be compulsorily registered with the competent authorities, in the absence of which it will be considered invalid. Lastly, the donee must apply for mutation of the property in his/her favour, in the records of the relevant local municipal authority.

### Can a gift be revoked?

Once a gift of immovable property is made in favour of a donee, a donor does not have the right to demand or seek monetary compensation nor does he/she have the right to revoke/cancel the gift at a later stage at his/her mere will. However, in some

cases parties may agree on a conditional gift wherein the gift may be revoked upon the occurrence of a condition/event which is not dependent on either party's will. This is in stark contrast to writing a Will where an individual can revoke, amend and replace it any number of times during his lifetime.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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