

How is the authenticity of a will verified?

Probate and letters of administration are two vital legal documents that enable speedy and effective settlement of wills

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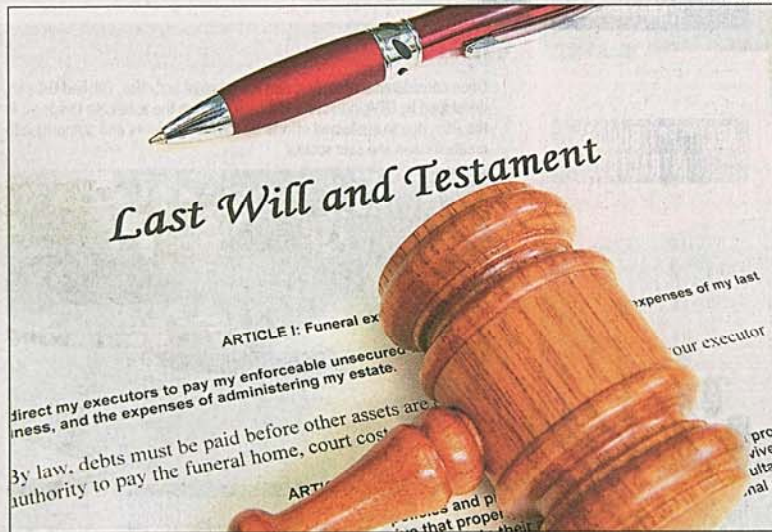
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LEGAL REMEDIES

What are the legal requirements for carrying out the wishes of a testator (ie, person deceased who leaves behind a will) after his or her demise? The first important requirement is that of obtaining probate, wherever it is compulsorily required. A probate is essentially a copy of the will of the deceased, certified under the seal of a competent court, with a grant of administration of the testator's assets. Once satisfied about due execution of the will as per requirements under the Indian Succession Act, 1925 (ISA), the court grants a probate order which certifies the authenticity of the will. The Indian Succession Act, 1925, deals with probate and letters of administration.

It is a misconception that

provisions of ISA do not apply to Hindus at all. Rather, ISA is a complete code of law of testamentary succession governing Hindus too, except to the extent modified by the Hindu Succession Act, 1956. Some important pointers are below:

- In order to apply for probate, the applicant must be able to show that he/she has been named as an executor under the will of the deceased - either expressly or by necessary implication. Hence a person not named as an executor, is not eligible to file probate petition.
- In probate proceedings, the court deals with questions such as whether will of the deceased was actually his/her last written will, whether the



testator was of sound mind at the time of writing the will, whether the will was duly executed and attested, to name a few.

- To establish the authenticity of a will, it is to be proved that the signature on the will belongs to the testator. It is also required to be proved that the will was properly attested by the witnesses.
- If one attesting witness is

able to prove in court that the will in question had been duly executed as per requirements under the Indian Succession Act, the examination of other attesting witness in court may be dispensed with. However, if one attesting witness fails to prove the due execution of the will to the satisfaction of the court, then the other attesting witness would be

required to supplement the evidence.

- At present, it is compulsory to obtain probate of a will that has been executed in cities like Mumbai, Chennai or Kolkata. It is also compulsory to obtain probate of a will which sets out inheritance of properties that are situated in Mumbai, Chennai or Kolkata - irrespective of the place of execution of the will.

Letters of administration: In the event that the deceased has not named any person to be executor of his/her will, a legatee under the will may be admitted to prove the will instead. In such a case, the court would grant letters of administration to the executor. There are also instances where even though the deceased has named an executor in his will, the executor refuses to act or is legally incapable to act. In such cases, too, a legatee may be admitted to prove the will, and letters of administration may be granted to him.

Where a deceased has named an executor in his will, but the executor dies before having administered the estate of the deceased, letters of administration may be granted to the legatee in such cases too.

In order to ensure smooth and speedy administration of the estate after one's demise, one must clearly set out the scheme of inheritance and name the beneficiaries explicitly under the will.

The author is senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisation is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com or ht@zeus.firm.in



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LAW BOOK
Sunil Tyagi

I am planning to purchase an under-construction flat in a residential project from the original allottee of the flat. What is the stamp duty payable?

- R Siddharth

No stamp duty is payable on a mere transfer of an allotment of the flat by the present allottee of the flat in your favour.

I want to purchase the ground floor of a two-storey property which was jointly inherited by two siblings. The siblings have a mutual understanding to reside on separate floors of the property. The one residing on the first floor is unwilling to join in the execution of the sale deed of the ground floor in my favour?

- Sumit Sharma

Since the property is jointly owned by two individuals, each individual has undivided share in the entire property, which is not identifiable by metes and bounds, even though currently each individual may actually be residing on separate floors. Since you are planning to purchase only the ground floor, the sale deed in your favour for this specific portion of the property is required to be executed by both the owners, given that they both have joint and undivided share in the ground floor. However, in case the joint owner who is occupying the first floor is unwilling to execute a sale deed in your favour in respect of his undivided ownership in the ground floor, the next suitable alternative is to purchase the ground floor after the entire property has been

partitioned by metes and bounds.

What is the applicable stamp duty rate and registration fee on sale deed of a property purchased by a woman in Delhi?

- Sumona Sagar

In Delhi, the duty rate payable on sale deed/conveyance deed of an immovable property which is purchased by a woman or in favour of a woman is 4% (out of which 2% is towards stamp duty and 2% is towards corporation tax). Currently, the registration fee for a sale deed/conveyance deed of an immovable property in Delhi is 1% of the consideration amount set out in the document or of the value calculated as per prevailing circle rates - whichever amount is higher, and subject to a minimum fee of ₹1,000.

I am a Hindu male and own certain coparcenary properties. Can I write a will for setting out succession of such coparcenary properties?

-Shobhit Sharma

Yes, you may make a testamentary disposition of your own undivided share in the coparcenary/ancestral property under your will.

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CHEQUE BOOK
Harsh Roongta

I am living/working outside India, I took a home loan from a bank. For this purpose, I had to make GPA (General Power of Attorney). Can the GPA holder misuse it? Can he sell the property without my knowledge? What are the risks involved here and how can I address them?

authority to the power of attorney holder under the document to be executed. I would advise you to take the help of a good lawyer in preparing such a document. So instead of executing an open general power of attorney,

chase/home loan, etc and exclude the power to sell /pledge or otherwise deal with the property in such a document.

In fact, the bank will provide their standard format to you. If you read that, it does not authorise the POA holder to sell the property or in any manner deal with the property. It only authorises him/her to sign the loan application forms and authenticate documents on your behalf and sign the loan and other related

I have settled dues with a bank in July 2010 for a credit card I was holding. My CIBIL report shows the status as Post (WO) Settled. My CIBIL score is 812. I want to take a home loan from SBI. What are the chances that I would get a loan?

Gagan Nagpal

Firstly a credit score of 812 is excellent and surprising given the default reported in your credit report. In most likelihood it must have been a small amount that must have been settled reasonably quickly. That's the only way you can

point to check the probability of the borrower defaulting on re-payments of the loan. The final decision to sanction the loan will also be dependent on your disposable income, your regular household expenses and current credit dues, if any. Considering your current credit score, there is no harm in applying to SBI for home loan, but they will definitely ask for greater details on the default issue.

(for loan amount below ₹20 lakh) of the agreement value of the property as a home loan. The overall eligibility will be based on your income, your regular outgoings and repayment track record, if any.

Since you are 33 years of age, with a net monthly income of ₹14,000 per month, you should be eligible for approx. loan amount of ₹6 lakh @ 9.95% - 10.25% pa for a tenure of 25 years provided you have no other loans to

