

Registration of will after death possible

A legatee or beneficiary can present a will to a registrar after the demise of a testator as per the Indian Registration Act 1908

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Elderly people are usually concerned about the inheritance and distribution of their properties amongst their heirs and loved ones. A will is the safest means to ensure that family members get their rightful share of property after a person's death. Writing a will eliminates chances of legal hassles and disputes among heirs over the property left behind by the deceased. A will is a document that states the intention of the testator regarding the manner in which his assets or properties are to be distributed post his demise.

In India, testamentary succession is governed by the Indian Succession Act, 1925. For a smooth distribution of the properties of the deceased, it is important to bear in mind the legalities that ensure validity

of a will. The Indian Succession Act, 1925 prescribes the manner of executing a valid will.

For a will to be valid, the testator must be a major (ie above 18 years), of sound mind and capable of exercising his or her free will and judgement. One must clearly describe the properties to be bequeathed and the persons who stand to inherit them. It is desirable that the will be read out to the testator (in case he is unable to read and write) in order to confirm that his intentions are accurately captured in the will.

The testator must execute and sign his will in the presence of at least two witnesses, who in turn must attest the will in the presence of the testator. It is also desirable to appoint an executor for one's will (who can be a trusted member of the family or even a non-family member). The role of an executor is to essentially oversee the process of distribution of the testator's assets amongst his or her beneficiaries.

Under the Indian Stamp Act, 1899, no stamp duty is leviable and payable on a will – irrespective of the value of the immovable properties being bequeathed



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under the will. Hence, a will can even be made on plain paper. It is not mandatory to register a will as per the Indian Registration Act, 1908. Even an unregistered will is a valid legal instrument if it has been duly executed as per the requirements under the Indian Succession Act, 1925.

However, it would be wiser to duly register the will in order to preserve an authentic

record and curb the chances of fraudulent wills. The Indian Registration Act, 1908, has provisions for getting the will registered even after the death of the testator.

Even after the testator's demise a will can be presented to the concerned registrar or sub-registrar for registration by the executor appointed under the will or a legatee/beneficiary

under the will. The registrar or sub-registrar can then register the will if they are satisfied that the will was duly executed by the testator and the person who are presenting it for registration are entitled to present the same (being the executor as well as the legatee).

Though it is advisable to get the will registered during one's lifetime, the registration

of a will after the death of the testator can be done without complicating things.

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