



Varaiya and Shah LLP

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WILL

Some important features of WILL

1. Is there really any need to explain the importance of making will? Of course not. Will is of vital importance mainly for smooth transition of one's properties after death and to avoid any dispute among the heirs. In absence of WILL, the heirs have to obtain "Succession Certificate" and "Letter of Administration" which involve huge expenses, wastages of time and severe hassle. Let it be clear that Nominees are merely "Caretaker" and do not become owners. Hence WILL is a must to have legal ownership; nomination is not enough.
2. In some cases, it may be necessary to obtain "Probate" especially for transfer of immovable properties based on WILL.
3. **Important points while making WILL:**
 - i. Testator (person making WILL) should write his/her full name, age, current address, date of WILL very clearly.
 - ii. Complete and precise details of properties to pass on.
 - iii. Complete details of bequeethes (persons going to inherit properties) and relationship with testator.
 - iv. Executors should be named carefully: they should be trustworthy, competent, practical and neutral; should be comparatively younger; should be willing to act as executors; if relatives, they should be equally related to bequeethes; in capable to fulfil the wishes of testator.
 - v. Testator should sign WILL in presence of two witnesses i.e. all three should be at one place while signing. Witnesses should write their names and full addresses.

Witnesses should confirm that testator is:

- a) mentally of sound mind.
- b) not /has not been pressurised to make WILL
- c) making WILL as per his/her wishes.

vi. In case of aged testator, it is advisable to attach Doctor's certificate, certifying testator mental fitness.

vii. Bequeethes cannot be witnesses.

4. Other important factors:

- i. Practically it is advisable not to gift one's substantial properties during his/her lifetime because this may cause severe financial, physical and mental stress to him/her; he/she may be ignored by next generation.
- ii. Similarly, testator should make substantial provision in WILL for spouse. Consider inflation and ever rising medical cost
- iii. Both spouses should execute WILL separately, considering above points
- iv. It is advisable to register WILL.

Conclusion:

WILL is an extremely important and vital document. It should be drafted very carefully. It is advisable to get it drafted by a professional person.

Date: 11th October, 2024

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