Make it easy for your legal heirs

Writing a will is considered a taboo in India as it is considered a bad omen, but not doing so will only spell more trouble for your family

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The passing away of a loved one always creates an emotional and financial trauma, especially if they have suffered a lot. It may be difficult to draft a will when someone has a serious illness like last stage of cancer, or if there is a sudden accidental death and the only survivors are the children who are minors, or if a patient becomes brain dead and is incapacitated.

Sometimes, even in old age, grandparents and parents consider writing a will as taboo, since it is considered a bad omen if one were to write about distribution of assets.

We recommend that our clients make a will the moment they have dependents to look after. Dependents could be a homemaker, or children, or ageing parents that are being looked after. When the family is dependent on a sole bread earner, it is very important a will is created to ensure smooth transition of assets. Another important time when will creation is important is if people have a large family and are living in the joint family set up.

The person who makes a will is called a Testator. The person who executes or helps in division of assets on the death of the testator is called the Executor and the claimants are the beneficiaries of a will. A Witness validates or authenticates the will written and states that the person writing the will is in sound mind.

One must consider writing a will for the following reasons

- Bringing financial affairs in order, i.e. review the mode of holding
- Having nominations for each financial assets and property.
- Removing conflict by giving clear instructions
- Deciding beneficiaries to whom you wish to leave your wealth

Anyone can make a will—Irrespective of their religion, anyone over the age of 21 years can make a will. However, Muslims, not married under Special Marriages Act, are allowed to bequeath only one third of their assets while the rest is bequeathed in accordance with Muslim personal laws.

A will can be challenged on the following grounds: sanity, under coercion and authenticity.

A nominee is only a trustee and therefore, a will supersedes such nominations and having a will in place is mandatory in spite of nominations made. Following are the areas that clients should consider for creating a will, and to ensure smooth transmission of assets: House, bank accounts, mutual funds, insurance companies and retirement benefits.

In the following cases, nomination supersedes a will and hence, making nominations for all categories of assets, and more so for demat account, physical shares and corporate bonds and debentures.

In the last one month, we have received two cases of death among our clients and thought of mentioning some important pointers for individuals making

nominations.

All mutual fund investments should be held in anyone or survivor mode. This makes the transmission the easiest and fastest.

Nominees created while investing in a mutual fund can be one, two or three. However, the process for distribution of investments to nominees is cumbersome and requires more paper work; besides the basic documentation on transmission of assets.

In addition to KYC documents (PAN copies and address proof) of nominee and original/notarised copy of death certificates, the nominee bank account details with bank manager attestation is required.

In some cases where the will does not clearly mention the nature of investment for division of assets, an indemnity bond executed by the nominee on stamp paper is required, indemnyfying the asset management company against any claims, losses, risks charges, and expenses which the company may suffer at the time of transfer of ownership of the asset to the nominee account.

For company deposits, an affidavit on stamp paper (notarised) is required, mentioning details of legal heirs and an NOC from other legal heirs stating that they have no objection to the amount being distributed to the nominee.

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All above documents are needed in case of nomination only (mostly).Therefore, having a joint or anyone or survivor account as mode of holding for mutual funds, bank accounts, company FDs, shares, demat accounts and for immovable assets like property makes the paper work less cumbersome and the tranmission smooth.

Also, the phase of losing someone to dealth is called a transition phase. Therefore, discussing such issues with the nominee sometimes creates resentment and emotional breakdown and therefore has to be dealt with professionally and in an unbiased manner.

Clients have shown resentment in distrbution of disproportionate assets among siblings and sometimes feel advisors are taking sides. Some clients are in a hurry to transfer assets in their name and then redeem and make good the money, while some others prefer only transfer of assets to hold for the long term for future growth and create an estate for the family.

It's important that advisors look at the situation objectively and follow the formalities and procedures laid down in the will. If needed, consultation with lawyers, property and tax consultants is also needed for execution of the will.

If the family has a differently-abled child, creating a trust for the lifelong benefits of the child with trustees who are younger in age ensures continuity and division in assets for beneficiaries.

In the 20th century, property division was said to be among generation of people in the family, level 1, 2 and 3 heirs, and created a lot of confusion, legal formalities and tax queries in distribution of assets; especially when there are grandparents, parents and siblngs that are apporioned small parts of the same asset.

In conclusion, what would you want from your family in your absence? Peace of mind and equitable distribution of assets that you have created over the years. Why not enable that for your family and make your will today?