Ayana Legal

THE BUZZ

Monthly Newsletter By Team Ayana Legal

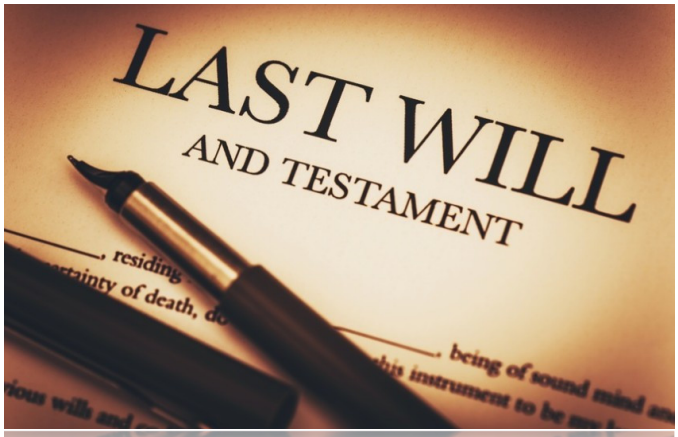
Essential Requirements Before Making a Will

According to section 59 of the Indian Succession Act the testator must:

- Be of legal age
- Be of sound mind
- Be free from any undue influence, coercion or force
- Voluntarily make the will

Conditions for Making a Valid Will

- The testator should affix his mark or sign
- Must be attested by 2 or more witnesses
- The witnesses must sign in the presence of the testator
- The witness must not be a beneficiary under the will



Testamentary Succession

Section 2(h) of the Indian Succession Act, 1925 defines a will as a "legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death."

This month's newsletter deals exclusively on the law relating to wills under the Indian Succession Act, Muslim law and Hindu law.

Indian Succession Act

Privileged Will

Section 65 and 66 of the Indian Succession Act discusses privileged will. Not everyone is allowed to make a privileged will. According to Section 65 a soldier engaged in actual warfare, an airman, or a mariner at sea over the age of 18 can dispose of their property through a privileged will. A privileged will can either be in writing or oral, if written and signed by the testator it does not need the attestation of witnesses. It may be written by another person too if shown that it follows the testator's directions. If oral it needs to be in the presence of two witnesses.

505 -506, 5th Floor, Brigade Towers, 135, Brigade Road, Bangalore - 560025
Email - contact@ayanalegal.com Tel - +918029548996.

The Requirement of Probate - mandatory or not?

Probate is defined under the Indian Succession Act as "*the copy of a Will, certified under the seal of a court of competent jurisdiction, with a grant of administration to the estate of the testator.*" The Act states that a probate is mandatory when:

- a will is made by a Hindu, Buddhist, Sikh or Jain within the local limits of the states of Bengal, Bombay or Madras.
- If the will is made outside the territories of these states but the property is situated within one of the above mentioned states.

The right of an executor or legatee of a will, for the above mentioned cases, cannot be established unless a competent court has granted probate of the will.

Thank You

In these unpredictable times, we hope that you are taking care of yourself. Team Ayana Legal thanks you for the trust. Till we are back with our next edition, stay safe and keep smiling.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided should not be construed as legal advice.

Unprivileged Will

Every testator other than those who can make privileged wills have to follow the procedure described under Section 63 of the Indian Succession Act. The testator has to sign or affix his mark on the will and has to be attested by 2 witnesses. It can also be signed by another person in the presence of the testator and by his direction.

Muslim Law

Muslim law clearly specifies Class I, II and III heirs and each of their shares are clearly specified. Since no heir can be denied their share, there is a limit put on the amount of property that can be disposed of through will – only 1/3rd of the property can be disposed. A will is called Wasiyatnama. The general rule is that the testator cannot bequeath property through will to an heir in order to prevent an heir from getting a double share.

Muslim law also has the concept of Hiba or gifts that allows a person to transfer property immediately and unconditionally to another. There is no restriction on how much property can be given by way of Hiba, this includes both movable and immovable property. But Hiba can only happen when the person making the gift is alive. Hiba can either be oral or written. It is essential that for Hiba to be complete the delivery of possession needs to be done.

Hindu Law

Under the Hindu Succession Act, 1956, Section 30 states that any Hindu may dispose by will any property which is capable of being disposed by him, in accordance to any law for the time being in force and applicable to Hindus. The testator has greater freedom, he can choose to whom he wishes to give the property to including heirs and total strangers. Explanation to Section 30 places a limitation on the amount of property that can be bequeathed through will. This was clarified in the case of Rajamma v. Rami Reddy (A.S No. 2592 of 1984) that a male Hindu cannot dispose of the entire joint family property through will, he can only dispose of his share.