

FAQs on Estate Planning

1. What is Estate Planning?

Estate Planning is the process of planning the administration of one's assets during his/her lifetime and their transfer to the desired beneficiaries post that. This can be achieved by a simple WILL and naming the beneficiaries, or by forming Private Family Trusts for specific purposes in addition to the WILL. Estate refers to one's possessions, investments, businesses, property etc.

When planning your estate, you could use tools such as a will, setting up a trust, establishing power of attorney, and other special structure vehicles.

2. What are the Objectives of Estate Planning?

- Safety and ring Fencing of Assets
- Seamless Transmission of Wealth to the beneficiaries
- Business succession in case of Family Business)
- Reducing conflicts amongst family members (in case of multiple beneficiaries)
- Assigning guardians of one's choice for his/her minor children

3. What are the consequences in the absence of an Estate Plan?

- The Estate is distributed as per the Succession Law of the state – which may not be in the desired manner
- In the absence of nominations, could invite expensive and time-consuming formalities to claim
- Claimants who you did not desire to share your Estate with
- Disputes within families

4. What is a will?

A Will is a legal document you draw up to declare your wishes for your loved ones as to how you want your assets to be distributed after you passed on.

5. What are the constituents of a Will?

- Testator- A person who is making the Will.
- Executor – The individual who executes the Will in the absence of the Testator.
- Guardian - A person appointed in a Will to take custody of minor children.
- Beneficiaries – The persons to whom the Testator desires to transfer the assets after his / her lifetime.
- Two Witness - A person who witness the signing of Will by the Testator.

6. What is a probate?

The term 'probate' means the process of legally establishing the validity of the Will

7. What is a codicil?

A codicil is a document executed by the Testator in addition to the Will to modify, delete or revoke specific provisions. It is a part of the existing Will similar to an addendum but not a new Will.

8. What is Letter of Administration?

Letters of Administration are granted by a Surrogate Court or probate registry to appoint appropriate people to deal with a deceased person's estate.

9. Does a Will resolve the possibility of any disputes?

NO, a mere Will does not eliminate the chances of a dispute within the beneficiaries. However, ensuring nominees recorded in the individual assets are as per the Will makes it simpler for the Executor. For example, a nominee in a housing society in Mumbai does not become the owner of the property in the absence of the holder; this can be resolved by a Will. Conversely in the case of business interest the provision of Companies Act prevails over succession laws hence the nomination takes over the Will.

10. Does one need to register his / her Will?

NO, registration of Will is not compulsory, even if it relates to immovable property. However, the registration would 'strengthen' the authenticity of the individuals signing the Will. Irrespective of the registration, the latest Will would be valid.

11. Does one need a Will if he/she has nominations for all his assets?

A Nominee is a custodian by law. Nominee may not always be the beneficiary to receive the assets in the absence of the holder. e.g. A nominee in a housing society or a bank account is a mere custodian however the same in a mutual fund or a business holding is the owner. To avoid disputes it is advisable to nominate the assets in accordance with the Will.

12. What are types of Trusts?

- Living Trust – A trust formed during the life of the Settlor/Testator.
- Testamentary – A trust that is established after the Settlor /Testator's death A testamentary trust goes into effect upon an individual's death and is commonly used when someone wants to leave assets to a beneficiary but doesn't want the beneficiary to receive those assets until a specified time. Testamentary trusts are irrevocable.
- Revocable – A trust where the Settlor has control and can be altered.
- Irrevocable – A trust in which once formed, the settlor does not have any control on the trust assets nor can he/she alter the beneficiaries or Trust deed.

13. What are the constituents of a Trust?

- Settlor – Author of the Trust
- Trustees- The individuals selected by the Settlor to manage the assets of the Trust
- Beneficiaries – The persons to whom the Settlor desires to transfer the trust assets

14. What is a Private Family Trust?

A Private Family Trust is a vehicle that manages the assets of a particular family. It can be created while the Testator or Settlor (in case of Trust) is alive. The legal responsibility of the administration and distribution of assets is transferred in the hands of Trustees who are bound by the Trust Deed.

Benefits of a will	Disadvantages of not preparing a will
You provide for your loved ones in the Will i.e. you choose your heirs rather than letting the law to decide for you.	Your estate will be distributed to your legal heirs as per Succession Acts i.e. Hindu Succession Act if you are a Hindu, Sharia if you are a Muslim & Indian Succession Act if you belong to any other Religion.
You exercise the right to appoint people of your choice to administer your estate (Executor) and to carry out your wishes, safe guarding the interest of those you love and care.	The Court decides for you. It might not be your choice.
No family conflict could arise over the choice of administrator(s)/executors.	Family conflict may arise on the choice of administrator(s)/executors.
You can appoint guardian of your choice for your infant children, so that their welfare, support, health and education will be taken care by the right person.	The Court decides for you. It might not be your choice or the best person for your children.
Generally, it costs less in term of legal fees to apply for Grant of Probate (GP) than Letter of Administration (LA).	Legal fees could be costly.
With a Will, the whole legal estate administration process is expedited.	Without a Will the legal process could take years. Assets could have shrunk in value when Letter of Administration is obtained.

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