

# M4MONEY

## JOURNEY TOWARDS FINANCIAL BLISS



Estate planning is the process of anticipating and arranging during your lifetime for the disposal of your estate after your death. It typically attempts to eliminate uncertainties over the administration of your estate and maximize the value of your estate by reducing taxes and other expenses. It refers to those activities that are focussed on transfer of wealth to heirs, charity and other identified beneficiaries. It is done through instruments such as Trusts, Last Will & Testament, Living Wills, Nominees, Power of Attorneys, Beneficiaries, Executors, Guardians, Gifts, etc.

Though Estate Planning is vital, it is often neglected in one's financial planning process. Many people believe that an Estate Plan simply means drafting a Will or at the most a Trust deed. However, there is much more to estate planning, in order to ensure that, upon your death, all your assets are transferred seamlessly to your heirs and other beneficiaries. **Estate planning covers the structural, financial, legal and tax aspects of managing wealth** in the interest of intended beneficiaries. It essentially involves structuring your personal financial affairs in such a way that, upon your death:

- estate duty is minimized
- inheritances are sufficiently protected for your heirs
- assets are transferred to heirs, smoothly with clarity

There is more to estate planning than deciding how to divide your assets when you die. It's also about making certain that your family members and other beneficiaries are provided for, and have access to your assets upon your temporary or permanent incapacity.

To reap the full benefit of good estate planning and to avoid pitfalls, it is essential to obtain advice from a skilled and professional advisor. It is important to understand the full spectrum, as listed below, of Estate Planning and plan for all contingencies.

### 1 - Trust

Trust is an agreement between an owner of assets and trustees whereby the trustees undertake to administer, objectively manage and control the trust's assets with necessary care for the benefit of

beneficiaries. It is an efficient and flexible method to ensure that wealth earned by an elder stays within the family. There are different types of Trusts that one can create - the most important being:

- a Trust created while you are still alive
- a Trust created from your Will after your death

Trust can also be created for utilisation of assets towards specified objectives (e.g. charitable or social causes), and/or for the benefit of specified persons (e.g. your handicapped or minor child)

## **2 - Will**

Your Last Will & Testament is one of the most important documents to be drawn up during your lifetime as it contains your final wishes about the assets you have accumulated in your lifetime. Above all, it represents financial peace of mind to those you leave behind and are financially responsible for.

It ensures that one's loved ones inherit what is rightfully theirs. It is a misconception that property is automatically passed on to the spouse and children. A Will or Trust should be one of the main aspects of every Estate Plan, even if you don't have substantial assets. Wills help to ensure that property is passed according to an individual's wishes. Simply having a Will and/or a Trust deed isn't enough. Its drafting and execution process is critically important. The rules for writing a will are determined by applicable Indian Succession Acts.

When you draft your Will, make sure it is complete and specific. Write the Will clearly and do not use jargon. A Will usually starts with a declaration by the maker stating that it is being drafted of his/her own volition, with sound mind and without pressure. One must write his/her full name, age and residential address. Then, list out all your assets, with specific identification details of each of them - property, provident fund balances, bank accounts/deposits, postal investments, insurance policies, mutual funds, share certificates, cars & vehicles, jewellery, artefacts, etc.; also specifying where these assets/title documents are kept.

One must clearly mention how each of these assets would be divided, among which beneficiary and in what proportion. It is desirable to include a 'residual' clause also in the Will. Likewise, if you nominate a minor as a beneficiary, you must also appoint a custodian till the minor attains majority. Normally, a nominee or a second joint holder of an asset is only a trustee caretaker of such asset. A Will, however, will specify to whom the asset will be bequeathed. In the absence of a Will, nominee will have to distribute the asset in accordance with one's personal law. The recent exception made is in respect of Insurance Policies purchased under Married Woman's Property Act, 2015, where a widow is the sole beneficiary of such insurance policy.

Will must be signed in the presence of at least two independent witnesses, whom you trust and those expected to outlive you - ideally, a family doctor or a lawyer. Ensure that witnesses aren't beneficiaries. Witnesses too have to sign the Will, certifying that you have made the Will in their

presence. The date and place of execution of the Will must be indicated clearly. Make sure you and witnesses sign all pages of the Will. After completing all formalities, the Will must be kept in a safe place. You may put it in an envelope and seal it with your signature and date.

You can change your Will any time you want to. However, when you make a new Will, you must mention that it is the latest Will and supersedes all earlier Wills. Even though registering a Will is not compulsory, if you apprehend succession disputes, it is recommended you register the Will at Sub Registrar's office. There should be only one copy of the Will. After your demise, an executor will be responsible for dividing your wealth among the beneficiaries. It is advisable to make your spouse your children the executor. In case you expect disputes, then a neutral and trusted party can also be made the executor.

A Will would ensure certainty and definiteness in not merely determining entitlement of your heirs but also in location and identification of assets. If a person dies without having made a Will i.e. intestate, then his/her assets will be divided as per Succession Act or applicable personal law. It is very difficult to transfer assets, especially immovable property, upon the demise of its owner. A Court's succession certificate would be required, after a proper process of identifying the legal heirs to the deceased. If there is a Will, it is much simpler to obtain probate from Court.

If you have made nominees in respect of such specific assets (bank deposits, insurance policies, etc.), pl. make sure to include these assets also in your Will to mention as to whom these assets would be bequeathed. If overlooked, Will might be contested. In that case, both individuals could be bitter toward each other (and you) for involving them in a legal battle.

## **2.1 - Living Will**

One key contingency which is overlooked by many in their Estate Planning is to make plans for contingency of one becoming mentally or physically incapacitated. A living will is an advance document reflecting a person's wishes regarding the type of medical care he or she would, or would not want, should they ever be without the mental and physical capacity to communicate his or her needs. One of the most important roles of a living will is that it may be the only written evidence of what a person's wishes are in such a critical situation.

### **2.1.1 - Power Of Attorney**

It's important to draft a power of attorney (POA) so that a person you assign will act on your behalf in the event of your disability. In the absence of a power of attorney, a court may be left to decide what happens to your assets. The court's decision may not be what you wanted. This document can give your agent the power to transact real estate, enter into financial transactions and make other legal decisions literally as if he or she was you. POA is revocable by the principal any time when the principal is deemed to be physically and mentally competent or upon death.

### **2.1.2 - Healthcare Power of Attorney**

By executing a healthcare POA, you can designate another individual (typically a spouse or family member) to make important healthcare decisions on your behalf in the event of incapacity. For such a document, you should pick someone who you trust, who shares your views and who would likely recommend a course of action that you would agree with. After all, this person could literally have your life in his/ her hands.

### **3 - Beneficiaries outside Will**

As was discussed earlier, a number of your possessions can pass to your heirs without being dictated in the will. This is why it is important to maintain a beneficiary (joint holder or as nominee) in such an account. In fact, all bank deposits, retirement accounts and insurance policies should contain a beneficiary.

If you don't name a beneficiary or if the beneficiary is deceased or unable to serve, a court could be left to decide the fate of your funds. And frankly, a judge that is unaware of your situation, beliefs and intent is unlikely to make the same decision that you would have made. Make certain that all such beneficiaries you name are over the age of 21 years and are mentally competent.

### **4 - Guardianship**

If you have kids or are considering having children, naming a guardian is incredibly important and should not be overlooked. Make sure the individual or couple you choose shares your views, is financially sound and is genuinely willing to raise children. In the absence of such guardian, a court will step in and could rule that your children live with a family member that you wouldn't have approved of.

### **5 – Gifts**

Gifts can also be an effective channel of transferring one's assets to his/her loved ones, during one's lifetime itself. It is an effective tool to minimise tax incidence, within the prevailing tax laws. It will ensure against any possible dispute later on as the donor is alive to clarify any dispute.

### **6 – Family Settlement**

Whenever there is dispute among several claimants to a property, Family settlement is an effective instrument to settle the dispute voluntarily with minimum cost as it is considered neither transfer of property nor gift.

## **7 - Letter of Intent**

A letter of intent is simply a document left by you to your executor or to a beneficiary. The purpose is to define what you want to be done with a particular asset after your death or incapacitation. In addition, some letters of intent also provide for the details of the funeral or other special requests. While such a document may not necessarily be valid in the eyes of the law, it helps inform a probate judge of your intentions and may help in the distribution of your assets if the will is deemed invalid for some reason.

***Protect your legacy for now and for future generations***

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