

“प्रज्ञान”

Means of Wisdom

"Mitigating complexities while writing a Will for NRI."



Life is uncertain and the only thing certain in life is change and its end. We accept life's uncertainties & related risk but, yet we tend to procrastinate and postpone our decision making relating to possibilities and scenarios surrounding death or incapacitation. While we pay attention to the other areas of planning, most tend to miss out on paying attention to succession planning.

NRIs face certain challenges while addressing this aspect. They may not be aware of the legal process or May not know whom to contact. Most of the time they may not be equipped to handle the regulatory aspects and they may have a limited time as they need to return to their residing country. They may lack knowledge about tax & legal and they may hold assets in the international jurisdictions which needs to be covered.

In simple words, a will is a document whereby a person expresses his desire as to the disposal of his property after his death.

Why do NRI's in particular need to prepare a Will and what are the problems specific to them:



Anybody who has acquired a certain asset and/or has a family needs to write his will, whether he is a resident or Non – Resident. Many NRI's create assets in various global jurisdictions and that includes India also. It is only prudent to cover these assets via a WILL.

Family members of NRIs seldom visit India. The family members may not be aware of the asset holdings and its locations. In case of real estate, they need to know the holding pattern and the current status. In case the NRI dies intestate then the family members will struggle to locate the said asset, transfer or inherit the asset. In this case they will have to apply for a Succession certificate and the process could be quite tiring. Litigation may add furthermore complications.

NRI's normally invest in financial assets in India as Indian financial investments offer them better returns. In case he does not write his WILL, it would be difficult for the family to identify and locate these investments. In many cases people are not organised and they may not have maintained all the records of their investments and their family may not be aware of the exact details. If he has Will in place and has mentioned the relevant bank details, demat account details and the investment details and the relationship manager details, then the execution process would be easy.

One needs to understand that the Inheritance laws of different countries or different jurisdictions are specific to their Laws and are governed by the local jurisdictions. The situation would be more challenging in case the NRI dies intestate. All the general succession laws are governed by the Indian Succession Act. If the succession is a Testamentary or Testate succession, then the transfer falls under the mentioned law. But if there is no proper will written, then the succession is governed by the corresponding laws of each religion.

NRIs face certain challenges while addressing this aspect. Since they may not be aware of the legal process, they may find this process challenging. NRIs need to first understand the specific succession Act which is relevant to them.

We have come across cases where the NRI has invested in the Real Estate asset with the help of his relative, but he may not know the exact status of that asset or he may not have the idea to deal with the title related challenges. They would invest in the asset without doing a proper due diligence. Therefore, it is important for the NRI to have the legal aspects and the paperwork organised and covered.

How to deal with the Risks and Contingencies that the NRI face and what all needs to be kept in mind while Drafting a Will:



Don't make multiple wills for multiple jurisdictions where assets are held. For e.g. if you hold assets in the UK, USA and India then you don't need three WILL, one will can cover all the assets held by you in different jurisdictions. One needs to consider local laws where the assets are domiciled. **Except for the UAE.** You can get a Will drafted and registered with DIFC DPR for the assets held in Dubai. It is advisable to contact an attorney for the same. If an NRI writes his WILL and wants to register it in the international jurisdiction then he should register his Will with the local embassy.

Declaring the contents of Will with your family members: **You don't need to declare the contents of the will to your family members, but you can inform them that you have created a WILL.** Declaration can lead to unnecessary family complications and dissatisfaction amongst the family members.

Choosing a right executor is extremely important. Executor will take over the function of doing all the legal formalities, identification of assets and beneficiaries and then distributing the assets to them. It is advisable to identify someone who is younger in age, who is mature to handle the legal formalities. It is advisable to appoint an executor who is local instead of appointing a person residing abroad. It would be difficult for the person living abroad to devote time and follow up.

Indian judiciary has recently allowed passive euthanasia. Now you can write a Living will, which means if you are in an incapacitated state you can opt for removal of the medical support system. But the Will does not cover managing of assets during the state of incapacitation. **So, it is advisable to draft and issue a Power of attorney in favour of the person you trust to mitigate the risk of incapacitation.**

Take help of a professional and don't attempt to do your own estate planning. You can make serious errors that will have negative effects on your estate and your life.

Though not mandatory **it is advisable to register your Will.** It will help your family members at the time of execution. This will also help the family to prove the genuinity of the WILL in case of a litigation. In case of fire or if one cannot find the WILL then the family can approach the registrar for the copy of the Will via the court. The probate process will be slightly easier if the Will is registered.

Do choose responsible and trustworthy trusted advisors and helpers. This includes possible guardians, executors, trustees, and power of attorney agents. You want to make sure that your affairs are handled appropriately and with care.

What should the NRIs do:



They should first seek help from an estate planner and seek legal guidance from a local lawyer and Tax expert. Collate and collect all the relevant documents, such as a will if available, property documents etc. and have these available when needed, write a WILL and revisit the Will once in three years.

Disclaimer: This knowledge series is not intended to hurt the sentiments of communities or individuals, living or dead that appear in it. Our intention has been, is and will always be to constantly add value to our valuable customers in some way or the other while we try to ensure that the information, we provide is correct, mistakes do occur, and we cannot guarantee the accuracy of our material. Terentia makes no warranties or representations as to the accuracy of information presented in the article/s. Terentia in the process of creating, producing, or delivering this article shall not be liable for any direct, incidental, consequential, indirect, special, exemplary, punitive, or other damages arising out of the use, or any errors or omissions or in the content of the article.