



PASSING ON YOUR LEGACY

Wills and nominations are perhaps the most neglected aspects of financial planning but their urgent importance cannot be overemphasised

■ By Chitra Iyer

RECENTLY, A CLIENT of mine suffered a heart attack and suddenly passed away. I had worked with him closely for a long time, to help him plan his finances and investments.

When I started working with him, his main focus was to protect his capital and make it grow while keeping things simple. His objective for keeping things simple was to enable his wife to manage things once he's gone. Over time his risk appetite changed and he only wanted safe investments that he could perhaps borrow against, if he needed money for his business.

Being a financial advisor requires us to have a connection with the client to understand well their needs, their risk taking appetite and help them make the right decisions. Sometimes this also means that if a client is too risk averse or conservative, the planner has to push him to make some decisions that will be in his interest.

When this client passed away, I learned that I should have pushed him to attend to one small but absolutely essential thing: choosing a nominee for one of his bank accounts. His primary bank account had no second holder nor was his wife a nominee. We had ensured that his wife is a second holder using the 'either or survivor' mode in all his other investments [In the event of the death of one of the depositors, the other can continue operating the account]. However the bank account in which his IT refunds and business receipts were due was only in his name. Thankfully, we had his will in place.

We plan to get a lawyer to get a succession certificate for his property and other assets where he is the sole holder. This however brings up once again two often overlooked aspects in financial planning: *Wills and Nominations*

A Will

People usually refrain from making a will thinking they have all the time in the world to do it later. Irrespective of how old you are, you have to make a will where you describe your wishes about what needs to be done with your assets. Out of the people who feel they need to make a will, few get down to actually making it because most people think it's an arduous task. But it is the most important thing you need to do.

Many people invest using single names for all their assets. Usually people feel that since they have nominated a person in most of their investments, they do not need to make a will as it serves the same purpose. This assumption is wrong.

A nominee is just a custodian [in most cases], who will distribute the assets to legal heirs named in a will or as per succession laws. A nominee can be a family

How does one make a will?

A will is actually a very easy document to make. Wills don't need to be made on stamp paper or in any particular format. All you need to do is specifically state what asset you want to bequeath to which person. While creating the will, it should be witnessed by two people who are not beneficiaries under the will. An executor can also be an attesting witness as long as he or she doesn't benefit from the will. To carry out the bequests, an executor must be appointed. You can appoint as many executors as you want, however one or two is the normal practice. While such a will is legally valid, have the will notarised and registered. Though notarisation/registration of the will is not essential and a notarised/registered will can be contested. It is better to have this done to enable banks and other establishments to divide the estate more promptly.

In the event that you are declared insane, you cannot create a will. Any will made during a period of lucidity is considered valid. So if you are declared sane at the time of making your will it is a legitimate will, even if you were declared insane prior to that.

A video will can easily be challenged in a court of law so it is advisable not create such a will.

member, friend or any other person that you trust. By clearly specifying in your will who you wish to leave a particular asset to upon your death, you can choose how you want to dispose of your assets.

You can add or amend your will by way of a codicil to factor in changes like marriage, divorce, having children, the passing away of any beneficiaries and the addition of new assets. Or you can revoke your earlier wills and create a new one rather than revising the existing one.

So a will should be reviewed as soon as a significant event occurs in your life.

Life insurance

Nominees named in insurance policies are expected to distribute the amount from the policy to the legal heirs as per the insured person's will or as per individual succession laws in the absence of a will. The nominee doesn't receive any part of the amount, unless stated in the will.

Property

Property owned by an individual will be shared equally among the wife and children as per Hindu Law, unless



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Create your will to choose how you want to dispose of your assets

written specifically in the will. Since there is always a possibility of dispute amongst legal heirs, it is always better to specifically mention the name of the person/s that should inherit the property. In case you are living in a co-operative housing society, on the death of the owner, the nominee will have to apply for the shares to be eventually transferred to the legal heirs. Here also, the nominee is just a custodian.

A minor is eligible to become a member of a co-operative housing society and hold property in his/her name. After the death of the member, the society has to transfer the shares to the nominee, even if the nominee is a minor. However, the guardian of the minor can exercise rights as a member of the co-operative housing society on behalf of the minor.

A person can will only his self-acquired assets to whosoever he pleases other than his legal heirs. However, his ancestral wealth can only go to his legal heirs. If you wish to will your assets to people other than your natural heirs then you need to mention the reason for doing so to prevent objection from other beneficiaries.

Hindus, Sikhs, Jains, Buddhists and Muslims have separate laws of succession, while other people are governed by the Indian Succession Act, 1925. Under this Act every Indian is entitled to equal shares of inherited property.

Mutual funds

Transfer of funds to the second holder of the investments is done easily once the

proof of death is handed in. Many clients usually sign on behalf of their wives and are always worried if the wife's signature would work after the husband passes away. Instead, the women themselves need to sign on all documents and understand the paperwork with reference to their investments. Here too, a nominee is only a custodian [in most cases], who will distribute the assets to legal heirs named in the will or as per succession laws.

Bank accounts and fixed deposits

Please ensure that your bank accounts/fixed deposits have your spouse as the second holder and add your children as nominees. If your children are minors, then the nominee should be a grandparent. Even in the case of mutual fund investments and bank accounts [including FDs], the nominee is just a custodian and hence a will overrides the nomination.

Provident fund

In the case of provident funds, the nominee inherits the amount on the demise of the account holder. Hence, you need to nominate a family member in the case of your provident funds accounts. If there are no nominees, then the legal heirs can claim the corpus of the PPF.

Stocks, bonds and debentures

If you hold company stocks, the nominee legally inherits the stocks on the death of the shareholder, even if the deceased has named another person in the will. The same goes with bonds and debentures. All the three investments fall under the Companies Act.

HUF [Hindu Undivided Family]

All assets in the name of a HUF devolve in the names of the coparceners of the HUF after the demise of the *Karta*. Bank accounts and investments need to be in the names of the HUF members. However, the HUF needs to be led by a new *Karta* who will be the next male member in the family or the widow [in absence of her son or if the son is a minor].

Special needs child

In case there is a special needs child in the family, care should be taken to protect his/her rights by setting up a trust. The child's guardianship needs to be taken care of promptly when he/she becomes a major. Have the sibling or a trustworthy individual as an additional guardian along with the parents. Seek the help of a lawyer to understand the inheritance aspects for various assets and to draft a will accordingly.

Crafting your will is essential to make it easy to transfer your assets to your loved ones.



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