

Probate of Will

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“where the legal tapestry of one's legacy unfolds, weaving the authentic wishes into the fabric of reality.”

SHORT SUMMARY:

The author will cover the "***Probate of Will***" in this column. Probate, as defined under Section 2(f) of the Indian Succession Act, 1925, is a legal process that validates a deceased person's will. It is essentially a judicial confirmation that a will is genuine and grants the executor the authority to distribute the estate according to the deceased's wishes. This legal acknowledgment is crucial in the Indian context, where the authenticity of a will might be contested, making Probate an essential step in upholding the testamentary intentions of the deceased.

PROBATE:

Probate to Section 2(f) 1 of the Indian Succession act of 1925, probate is a copy of the will that has had the appropriate courts seal affixed to it. Probate is a legal process that validates a deceased person's will. It is essentially a judicial confirmation that a will is genuine and grants the executor the authority to distribute the estate according to the deceased's wishes. This legal acknowledgment is crucial in the Indian context, where the authenticity of a will might be contested, making Probate an essential step in upholding the testamentary intentions of the deceased.

Executor of Will: if the decedent left a will, it will specify who they wanted to handle their estate's administration. The title "executor of the will" refers to this individual.

Who Can Apply for Probate?

The application for Probate is typically initiated by the executor named in the will. This is usually a person or entity trusted by the deceased to carry out the final wishes as stated in the will. In cases where the will does not name an executor, or if the named executor is unable or unwilling to act, a beneficiary or a close relative of the deceased can apply to the court for the grant of Probate.

Under what situations is probate compulsory?

According to the Indian Succession Act of 1925, probate is obligatory when the following conditions are met:

- A Will that falls between the territorial jurisdiction of the state of West Bengal and the administrative boundaries of the metropolitan cities of Chennai and Mumbai.
- The Will is created by an individual practicing Hinduism, Jainism, Sikhism, or Buddhism and dwelling in the state of West Bengal, Chennai, or Mumbai.
- The Will pertains to both movable and immovable assets located in the state of West Bengal, Chennai, or Mumbai.

While probate of the will is not obligatory in all situations, it is recommended to seek probate where there is a likelihood that the will's validity may be contested on any grounds in the future.

Purpose of Probate:

- i. **Authentication:** Probate verifies the legitimacy of the will, ensuring that it meets the legal requirements and was executed in accordance with the applicable laws.
- ii. **Executor Appointment:** It formally appoints the executor designated in the will, granting them the legal authority to carry out the instructions outlined in the document.

- iii. **Asset Distribution:** Probate provides a legal framework for the distribution of the deceased person's assets as per the terms specified in the will, ensuring that the process follows the deceased's wishes.
- iv. **Creditor Notification:** During probate, creditors are notified, and any outstanding debts or claims against the estate are addressed, helping to settle the deceased person's financial affairs.
- v. **Legal Protection:** The probate process offers legal protection by establishing a clear, court-approved document that outlines the distribution of assets, reducing the likelihood of disputes among heirs.

PROCESS OF PROBATE

Authority to issue Certificate:

Before the principal court of original jurisdiction or the High court (which has concurrent jurisdiction).

Expense for Probate:

The cost of obtaining probate varies from state to state as the District Court grants it. The fees depend on the value of the assets, which are the subject matter of the petition.

- **Documentation Preparation:** To begin the Probate process, gather all necessary documents. This typically includes the original Will, death certificate of the Testator, affidavits, declarations, and a list of legal heirs, details of assets, and Beneficiaries.
- **Filing the Probate Petition:** The executor of the will is required to file a petition and the original will to the court for grant of probate. It should contain the following facts.
 - i. the time of the testator's death
 - ii. that the writing annexed in his last will and testament
 - iii. that it was duly executed
 - iv. the amount of assets which are likely to come to the petitioner's hands, and
 - v. the petitioner is the executor named in the will

- The petition must be filed before a competent court. The pecuniary jurisdiction (Jurisdiction of the court depends on the petition's monetary value) may require a higher court to issue probate for high-value immovable assets through an advocate.
- The next step is that the court asks the petitioner to establish the testator's proof of death, proof that the testator's will has been validly executed and confirm that this is the last will of the deceased.
- Next, the court calls for objections by issuing notice to the next of kin of the deceased to raise objections, if any, and also orders the publication of a citation of the probate petition on board to notify the general public.
- If there are no objections, then the court grants the probate.
- The executor of the will is required to file a petition and the original will to the court for grant of probate. It should contain the following facts.

WHO CAN NOT GIVE PROBATE?

Probate cannot be granted to a minor or a person who lacks the capacity to make decisions, as stated in Section 223 of the Indian Succession Act, which was passed in 1925. If it is not a company that satisfies the standards that are outlined in the rules that will be established by the State Government that will be published in the Official Gazette in this regard, then an organization of persons will not be able to receive it.

Essential Documents For A Probate Application

1. **Original Will and Codicils (if any):** The cornerstone of the Probate application is the original Will, which outlines the wishes of the deceased regarding the distribution of assets. If there are any codicils (amendments) to the Will, they should also be included.
2. **Death Certificate of the Testator:** Providing the official death certificate of the Testator is a crucial step. This document serves as proof of the individual's passing and is necessary for legal proceedings.

3. **List of Legal Heirs/ Beneficiaries and Assets:** Compiling a comprehensive list of assets, legal heirs and Beneficiaries is a must. This document outlines who stands to inherit from the estate and is an integral part of the Probate application.

Conclusion:

Probate ensures the orderly and legal division of a deceased person's possessions. Probate provides a formal framework for executing the deceased's desires by verifying the will and confirming the executor. This court-supervised method resolves debts, notifies creditors, and ensures a fair and transparent estate distribution while preventing disputes and fraud. The probate process involves court proceedings and administrative steps, but its ultimate goal is to provide legal clarity, protect heirs and creditors, and formalise the deceased person's intentions, enabling a legal asset

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