

# TESTAMENTARY AND INTESTATE SUCCESSION, WILLS, NOMINATIONS AND MORE.....



## LEGAL ASPECTS OF NOMINATIONS, WILLS, TESTAMENTARY AND INTESTATE SUCCESSION AND OTHER RELEATED MATTERS

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# TESTAMENTARY AND INTESTATE SUCCESSION



## Testamentary Succession: Where there is a Will

- Distribution of Estate of the Deceased as per the Testamentary Intentions of the Deceased.
- Property to go to the Legatees in keeping with the Bequests.
- In such cases, the Executor of the Will may file for Probate, alternatively, any other interested party may file for Letters of Administration with Will Annexed.

## Intestate Succession: Where there is No Will

- Estate Devolves as per the Law of Succession
- In such cases, the Legal Heirs (or any one thereof), may apply for grant of Letters of Administration (without Will annexed) or a Succession Certificate

# NOMINATION



- Nominations are done for Convenience and Easy of Operations after the Demise of a Person.
  - A Nominee is a trustee of the Estate and not a Beneficiary.
- A nominee is entitled to operate the estate on the death of the holder.
- A Bank/Financial Institution or Co-operative Society cannot refuse transfer of holdings to a Nominee
  - When there is a nomination, the bank or society has to transfer the holdings to the Nominee without a Succession Certificate, Probate or Letters of Administration.

# NOMINEE Vs. BENEFICIARY



A **nominee** is a person who is **nominated** to receive or administer the money or estate upon the demise of the holder. A **beneficiary** is a person who is entitled to receive for his/her own benefit, the money/estate of the deceased holder.

# NOMINATION (Cont'd.)



Nominee is absolutely entitled to transfer of the property/holdings  
in his/her name

(Indrani Wahi Vs. Registrar of Co-operative Societies) [Supreme  
Court]

The Nominee ought to Transfer the holdings thereafter to the  
Beneficiaries/Legal Heirs

The purpose of Nominations is so that there is no difficulty in  
administering the estate of the deceased holder and to avoid  
unnecessary procedure

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# NOMINATION (Cont'd.)



The Legal Heir/Beneficiary/Legatee is absolutely entitled to claim from the Nominee, any share of the estate and amount or shares that have been transferred to the nominee.

# WILLS



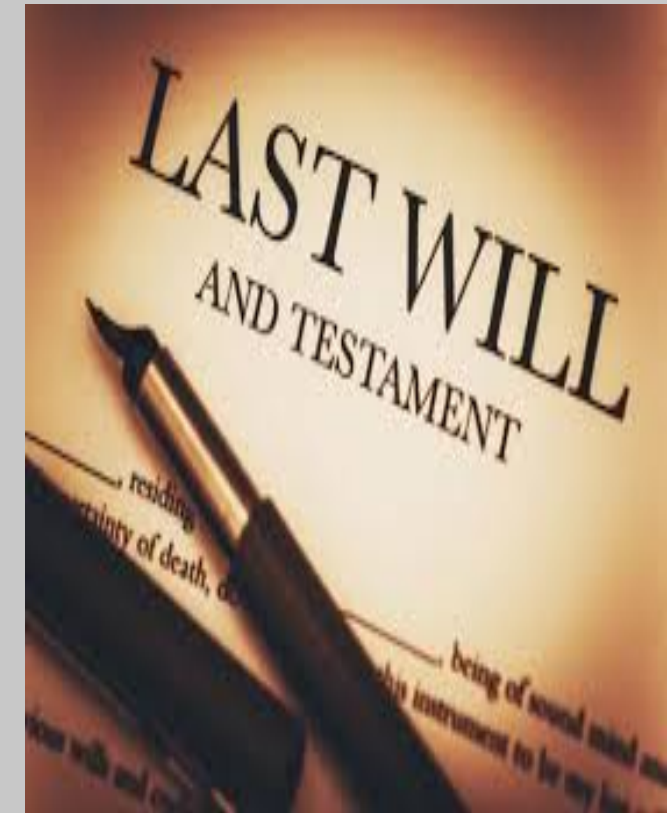
- ✓ Everyone (with property/assets) needs to make a Will
- ✓ Why is it important? Reduces disputes and litigation after the death of the Testator.
- ✓ When is it the Right time to make a Will? Now!
- ✓ You can make multiple Wills in your lifetime, each revoking all previous ones.



# ESSENTIAL ELEMENTS IN DRAFTING WILLS...



- ☐ **FORMAT:** Should state that it is being made of free will and volition
- ☐ Should state that it revokes all previous will and codicils
- ☐ **Witnesses:** 2 independent witnesses, should not be legatees under the Will
- ☐ **Medical Certificate:** Required in cases of Seniors or those suffering from prolonged ailments
- ☐ **Executor:** Preferably someone younger, who survives to testify and file the probate.
- ☐ **Registration:** NOT REQUIRED – It only has the effect of a third witness.





# CODICILS



- A Codicil is an Annexure to a Will
- It is used to amend/modify a Will to add, subtract or modify the contents of the Will
- It does not revoke the Will but Supplements it.
- It is executed in the same manner as a Will.
- You need to make reference to the Will it is being annexed to.

DO YOU HAVE A  
**WILL?**

# TESTAMENTARY PETITIONS



## HIGH COURT – TESTAMENTARY AND INTESTATE JURISDICTION

PROBATES

LETTERS OF ADMINISTRATION (WITH WILL ANNEXED)

TESTAMENTARY  
PROCEEDINGS

LETTERS OF ADMINISTRATION (WITHOUT WILL ANNEXED)

SUCCESSION CERTIFICATE

INTESTATE  
PROCEEDINGS

# PROBATES



- Probate is the Will Certified under the Seal of a Court of Competent Jurisdiction granting administration of the estate.
- It is not compulsory for Christians and Muslims u/Sec. 213 of the Indian Succession Act, 1925.
- Yet a Probate is always advisable to make the Will (and Titles of the Estate) Absolute.
  - Filed by the Executors of the Will.

# LETTERS OF ADMINISTRATION ( WITH WILL ANNEXED)



Filed when the Executor(s) is/are  
deceased or unavailable.

Can be filed by the next of kin/legal heir  
or any interested person(Legatee).



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# LETTERS OF ADMINISTRATION (WITHOUT WILL ANNEXED)



Such Petitions are filed when:

- a. There is no Will
- b. There are immoveable assets/properties.

They are filed in the same manner as discussed earlier.

# SUCCESSION CERTIFICATE



Filed when there is No Will and No Immoveable property.

Useful when there are monetary assets like PPF, MFs, Bank Deposits, Shares, etc.

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# TESTAMENTARY (GENERAL)

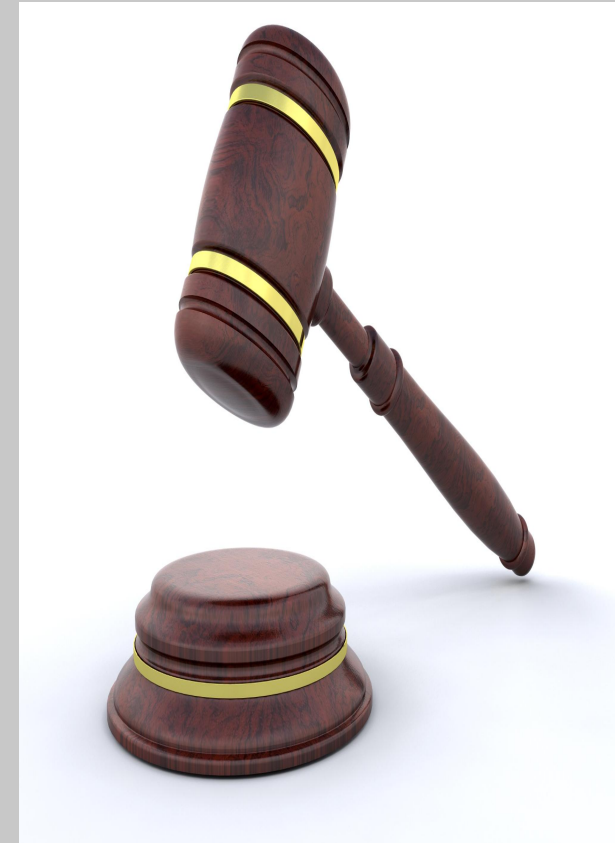


- ❖ In all cases, Citation is issued to All Concerned Parties and Legal Heirs
- ❖ However, if you are a beneficiary and feel that you may not be informed about the Petition, you may file a caveat.

# CHALLENGING A TESTAMENTARY PETITION



- ❖ File a Caveat (Testamentary) in the Concerned Petition.
- ❖ File an Affidavit in Support of the Caveat within 14 days.
- ❖ If the Court is satisfied that sufficient cause exists, the Testamentary Petition will be converted into a Testamentary Suit





# FAMILY ARRANGEMENTS, SETTLEMENT AGREEMENTS AND MOUs



## THE EASY WAY OUT!

- An Agreement to Settle the Devolution of the Estate of a Deceased Family Member amicably amongst the surviving members.
  - It is quick, inexpensive and hassle-free.
- However in cases of immovable property, it may not free up a perfectly marketable title.

# TESTAMENTARY SUITS



Once the Petition is converted into a Suit, the procedure is the same as a Civil Suit:

- Evidence
- Cross Examinations
- Arguments



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*Thank You*



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