**Do It youself (DIY) Joint and Mutual Will**

**Why a Joint and Mutual Will?**

A Joint and Mutual Will (“**JMW**”) is usually executed jointly by a husband and wife and provides that all movable and immovable properties owned individually by either of them or jointly by both of them will pass on to the survivor. Under a JMW, the survivor will have the right to dispose of the property / properties as he / she wishes during his / her lifetime and to make a Will in respect of the same. A JMW further provides that in case both parties die together or in case the survivor dies without making a Will, the properties owned by the survivor will be bequeathed as provided in the JMW.

It is often the case that when a husband or a wife passes away, the survivor loses access to their residence or funds because of claims by other members of the family. A JMW ensures that the survivor will not be deprived of assets and property which the couple earned through mutual effort after the death of one of them and that he or she will be able to enjoy the same until death.

A JMW provides for distribution of the assets and properties after the death of the survivor but gives the option to the survivor to make a Will prior to his or her death; in which case, the provisions of the JMW will cease to be effective.

**Guidelines for making DIY WILLS including JMW**

1. Will making in India is very simple and typically can be a “Do It Yourself” (“**DIY**”) project. You don’t always require a lawyer to draft a Will; however, if you think you need legal advice to make a Will, please consult a qualified Lawyer. We can help you locate one.
2. You can make your Will in your own language but what is written by you must convey your intentions.
3. A Will is valid only if it has the Testator’s signature and it is witnessed by two witnesses.
4. A Will does not need to be registered, but it is advisable to do so. An unregistered Will can be revoked at any time and you can make a fresh Will, but must have the proper signature of the testator and two witnesses.
5. A supplement to a Will (usually modifying its terms) is called Codicil and it can be made with Testator’s signature and witnessed by two witnesses.
6. Check if your intentions in the Will are consistent (for Example Mr Verma wrote in his will that he wants to gift his house to A after his death and in a later part of the Will, Mr Verma states that all his immovable property will be gifted to B after his death. This is a clear conflict of intentions)
7. Anything left blank should be filled before the witnesses attest the Will.
8. If any moveable or immovable property is added to your assets, a new Will must be executed or a Codicil must be added to the Will.

**Personal Details (Mandatory)**

In order to identify yourself correctly and completely and to avoid any ambiguity, please record the following correctly:

1. Your (i.e. the Testator’s) full name as recorded in a valid proof of identity such as Aadhar Card or Passport;
2. Your father’s full name as recorded in a valid proof of identity such as Aadhar Card or Passport;
3. Your residential address as recorded in a valid proof of residence such as Aadhar card/ Passport or Utility Bill;
4. Citizenship;
5. Wills made by minors are not legally valid; therefore, you have to record that you are an adult. You also need to state your date of Birth and age;
6. You need to record that the Will has been made by you while you are in possession of your full senses and that the Will has been made without any undue influence or coercion;
7. You need to record that the Will you are executing is your Last Will and Testament and that all previous Wills and Codicils stand/ are hereby revoked by virtue of this Will.

**Details of Assets & Beneficiaries (Mandatory)**

1. Your Will should have a clause bequeathing (*which means leave a property to someone by a Will*) your property, whether immovable (like land and building) or immovable (like Cars, Bank Deposits, Shares, Mutual Fund units etc.) In order to avoid confusion, it is advisable to list out all your properties in a Schedule to the Will. The format of the Will provided by us below includes a suggested schedule.
2. The following clauses should be included in your Will: -
3. A clause bequeathing property to the beneficiary.
4. How your assets are to be distributed if the beneficiary passes away before you do; for e.g. if the beneficiary was your wife or husband, the assets could then go to your children. If your children are minors, it is necessary to also designate or name legal guardians/trustees for the property until such time they attain majority.

*Note: The person who raises your children is called a guardian. The person who looks after your children’s assets/money until they are old enough to handle their assets/money by themselves is referred to as the “Trustee”.*

1. You may also want to indicate how expenses for ceremonies after death or for execution of your Will or even repayment of liabilities are to be met from your assets; typically, a certain sum is set apart for such expenses and is mentioned in the Will.

**Signature (Mandatory)**

1. Please affix your signature or at least your initials on all the pages and full signature at the end of the document and in the Schedules to the Will; please remember to mention the date on and place at which you have signed the Will.
2. The act of you signing your Will should be witnessed by a minimum of two witnesses. The witnesses should also initial on all the pages and affix full signature on the last page, after your signature. The witness/es should also mention their full name, as recorded in a valid proof of identity such as Aadhar Card or Passport, his/her father’s full name as recorded in a valid proof of identity such as Aadhar Card or Passport; residential address as recorded in a valid proof of residence such as Passport or Utility Bill, citizenship and the date on and place at which the signature was affixed.

**Executor’s Details (Optional)**

1. You may want to nominate a person to be the Executor of your Will. An Executor will implement your wishes as recorded in the Will after your demise. Usually, the beneficiary of the Will is nominated as the Executor; most married people choose their spouse as their Executor since he/she knows most about their property and generally this person is the Beneficiary of the Will. However, a third person like a trusted friend or relative, a solicitor etc., can also be nominated as an Executor.
2. The Executor’s full name as recorded along with a valid proof of his/ her identity such as Aadhar Card or Passport, age, his/her father’s full name as recorded in a valid proof of identity such as Aadhar Card or Passport, residential address as recorded in a valid proof of residence such as Passport or Utility Bill and relationship with the testator, should be clearly mentioned in the Will.
3. It is prudent to provide for an alternative Executor, if the one named in your Will were to pass away before you do. Such a change can be made through a Codicil.
4. If no Executor is named by you in the Will, at the time of grant of probate, a court may consider an Executor as being appointed by implication; for e.g. the beneficiary may be considered as the Executor.

**Registration of Will (Optional)**

1. In India, it is not compulsory to register a Will. A Will is not a compulsorily registerable document under Section 17 of the Registration Act, 1908.
2. However, under Section 18 (e) of the Registration Act, 1908, a Testator can choose to register a Will with the relevant Registrar/Sub-Registrar of Assurances, which is usually the same office where property documents are also registered.
3. A registered Will can be revoked through a subsequent unregistered Will; of course, the subsequent Will needs to contain details of the Will being revoked.

**Stamp Duty**

No stamp duty is payable in respect of a Will; therefore, there is no need to write a Will on a Stamp Paper (Judicial or Non-Judicial).

**Things to keep in mind while choosing the witness for the will.**

Both the witnesses should be adults who are above 18 years of age. When you choose the witness, you must keep in mind that they should survive you as they may need to testify regarding the validity of the Will after your death in order to probate the Will if required. It is important to ensure that your witness does not have any vested interest or conflicts.

**Probate of the Will**

A probate is the court process by which the validity of the Will (including whether the Will is the last one) is tested. When a court grants probate, the court certifies the Will and also grants a Letter of Administration to the Executor. This Letter of Administration authorizes the Executor to manage the estate of the deceased person as per the terms of the Will.

**FORMAT OF A JOINT MUTUAL WILL**

We, [1. NAME, CITIZENSHIP, AGE, NAME OF FATHER, holding AADHAR CARD NO. \_\_\_\_\_\_\_, RESIDENCE ADDRESS **and**

2. NAME, CITIZENSHIP, AGE, NAME OF FATHER, holding AADHAR CARD NO. \_\_\_\_\_\_\_, RESIDENCE ADDRESS] do hereby jointly make this Mutual Will and declare as follows:-

* 1. We hereby revoke all our previous Wills (or) Codicils and this is our last Will.
  2. We are in good health and possess sound minds and this Will is made by us without any persuasion or coercion or undue influence and out of our own independent decision.
  3. In the event of death of either of us, the survivor will become the sole and full owner of all movable and immovable assets and properties owned by us jointly and severally including but not limited to lands, buildings, cash, deposits in various banks and financial institutions, shares and other financial instruments, ornaments, household goods and appliances, furniture and fixtures, vehicles and accessories, rights in ancestral property and moveable assets, details of which are set out in **Schedule I** hereto. The survivor will have full rights in respect of such inherited assets and properties including all residue properties of the deceased ,including the right to give away as gift/or and to make a Will in respect of such inherited assets and properties. The survivor will get the full ownership of the property of the deceased and free to take decisions to sell / pledge /gift /donate or otherwise alienate any or all of the said properties/ assets so inherited and/or make another Will as and when the need may arise during the survivor’s life time.
  4. In the event of both of us dying simultaneously or in case one of us dies and the survivor dies subsequently without making any Will, the properties set out in Schedule I hereto and all properties acquired by the survivor in his or her lifetime will be bequeathed as under: -
     1. All movable assets and properties owned by both of us either individually or jointly will be divided in the following manner:

(*e.g. in equal proportion between our two children – son, ...................... and daughter, ....................or son the house ..* daughter the farmland)

* + 1. All immovable assets will be divided as follows:

[*e.g. House at .................... ............... including all furniture, fittings and fixtures at the said house will go jointly to our son, ..........................*

1. *Shop at .................... ............... including all furniture, fittings and fixtures at the said shop and also the goods therein and the goodwill of the shop will go to our daughter, ....................*
2. *Other immovable assets, if any, will go to our son, ..............................* ]

[*You may also record the distribution of assets/properties in a separate Schedule (format is given in Schedule II)*]

* 1. In case any of the beneficiaries named in this Will pre-decease i.e. die before us or before the survivor, the movable and immovable properties bequeathed to the said pre-deceased person will be distributed in the following manner after the death of the survivor among us.

[*e.g. divided equally between his or her spouse and his/her children, if any*]

In the event that such pre deceased person does not have any legal heirs, then the movable and immovable properties bequeathed to the said pre-deceased person will be distributed in the following manner after the death of the survivor among us.

[*e.g. distributed equally among other beneficiaries*]

* 1. In the event that none of the beneficiaries named in this Will survive after the death of the survivor among us, then our properties will be distributed as under: -

[*e.g. to orphanages or temples or churches or waqf trusts or gurudwaras etc.*)

* 1. We hereby name Mr./Ms/Mrs. [NAME, CITIZENSHIP, AGE, NAME OF FATHER, holding AADHAR CARD NO. \_\_\_\_\_\_\_, RESIDENCE ADDRESS] as the executor of our Mutual Will. The said Executor may pay for our funeral expenses and meet our liabilities at the time of our death from our properties set out in Schedule I. In the event that the Executor pre deceases us, Mr./Ms/Mrs. [NAME, CITIZENSHIP, AGE, NAME OF FATHER, holding AADHAR CARD NO. \_\_\_\_\_\_\_, RESIDENCE ADDRESS] shall be executor of this Mutual Will.

In witness whereof on the DATE day of MONTH, YEAR, we have put our respective signatures on this Mutual Will at PLACE before the attesting witnesses who on our request put their signatures before us. We have signed in their presence and they have signed in our presence.

|  |  |
| --- | --- |
| Signature of Testator 1  [Name]  Address  Aadhaar Card No [.]  [Place]  [Date] | Signature of Testator 2  [Name]  Address  Aadhaar Card No [.]  [Place]  [Date] |

(*Please affix your initials on all pages if the WILL has many pages*)

**Witnesses**

We hereby attest that this Will has been signed by Shri…………. And Smt …….as their last Will at ………(Place)……… in the joint presence of both testators and us. The testators are in sound mind and have made this Will without any coercion.

***Signature of Witness (1) Signature of Witness (2)***

**(Name of Witness 1) (Name of Witness 2)**

*Fathers name Fathers name*

*Address Address*

*Aadhar Card No. Aadhar Card No.*

*Place, date*

**SCHEDULE I**

|  |  |  |
| --- | --- | --- |
| **Sl. No.** | **Assets details** | **Owner** |
| 1. | [Flat No. [.],  Address: ,  City/ Town:  State: , INDIA  PIN |  |
| 2. | Bank balance in my Savings Bank A/c No. [NUMBER] with […BANK], [BRANCH]  Place: |  |
| 3. | The contents in the bank locker no [NUMBER], with […. BANK …..BRANCH, Place:] |  |
| 4. | Residential Plot no [NUMBER] located at [ADDRESS] |  |
| 5. | My [MAKE/MODEL] Car with registration no [NUMBER] |  |
| 6. | [NUMBER] shares of [COMPANY] held by me in Beneficiary Account No. [NUMBER] with [Depository Participant M/s….LIMITED at Branch:…] |  |
| 7 | LIC policies/ Pension policies/ Gratuity details |  |
| 8. | Any other asset not mentioned in this Will but of which we are the owners. |  |

**SCHEDULE II**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sl. No.** | **Assets details** | **Owner** | **Beneficiary** |
| 1. | [Flat No., Address: INDIA ] |  |  |
| 2. | Bank balance in my Savings Bank A/c No. [NUMBER] with [……BANK], [….. BRANCH] |  |  |
| 3. | The contents of bank locker no [NUMBER], with [STATE BANK OF INDIA, GOREGAON BRANCH, MUMBAI 400063] |  |  |
| 4. | Residential Plot no [NUMBER] located at [ADDRESS] |  |  |
| 5. | My [MAKE/MODEL] Car with registration no [NUMBER] |  |  |
| 6. | [NUMBER] shares of [COMPANY] held by me in Beneficiary Account No. [NUMBER] with [DP ….LIMITED] and Br details |  |  |
| 7. | Any other asset not mentioned in this Will but of which we are the owners. |  |  |

***Notes:***

1. *The above format is suitable for all Indian religions except Islam; for Muslims, Sharia applies and there are restrictions on bequeathing property under that law.*
2. *The above does not constitute a legal advice and Will & More does not take responsibility for the contents of the will made by you.*
3. *If you need the assistance of a lawyer in preparing your Will, please write to us at assistance@willsandmore.com.*