



INHERITANCE UNLOCKED: DECODING TESTAMENTARY PETITIONS

WEDNESDAY WISDOM

30-10-2024



PERSON DIES [1]

Will Exists (Testate)

Will does not Exist (Intestate)

Is an Executor named in the Will?

YES

NO

Legal heirs must file Letters of administration without Will for immovable property to administer and distribute the estate according to applicable succession laws.

If there exists only Movable Property like debts, securities, bank accounts, etc., legal heir must apply for Succession Certificate.

Probate petition should be filed by the Executor / Executrix to confirm the validity of the Will. Court issues probate upon satisfaction of formalities.

Executor not named or unable, or unwilling to act, then Beneficiary or legal heirs filed for Letters of administration with the Will annexed (For immovable and movable property of intestate deceased) (Court appoints an Administrator to act).

[1]The article reflects the general work of the authors, and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.



When a person passes away, the distribution of his/her estate is governed by personal succession laws. In India, specifically in Bombay (Mumbai), Maharashtra^[2], the process is regulated under the Indian Succession Act, 1925 (hereinafter referred to as "the Act"). The Act outlines the legal procedures for the administration of estates, especially in cases where the deceased has left behind a will (testate succession) or has died without a will (intestate succession).

This article aims to distinguish between four critical legal instruments used in the administration of estates in Bombay/Maharashtra:

1. Probate Petition;
2. Letters of Administration with Will;
3. Letters of Administration without Will;
4. Succession Certificate.

Each of these instruments serves a unique purpose and is subject to specific procedural and legal requirements.

[2] This procedure is not applicable to rest of Maharashtra.

Probate is a formal legal process by which the court certifies the validity of a Will left by a deceased person. In essence, probate is a court order confirming that a will is valid and authentic, and that the executor named therein has the authority to administer the deceased's estate. The probate process in Bombay, Maharashtra, is governed by the Act and is mandatory where the Will involves movable as well as immovable property situated in the territory^[3].

Filing of Petition by the Executor/Executrix in appropriate court in the will is required to file a probate petition before the Bombay High Court (Original Side) or the appropriate District Court, depending on the jurisdiction.

Contents of the Petition

1. Details of the deceased (date of death, residence)
2. Full and exact copy of the Will
3. Description of the assets
4. Name and addresses of the Legal heirs

A public notice is issued to inform all interested parties about the filing of probate petition.

Any person objecting to the probate can file a "caveat," opposing the grant of probate and the matter the matter proceeds to trial.

If no caveat is filed, the Court proceeds with hearing of the petition.

Once the Court is satisfied with the validity of the will, it grants probate, confirming the Executor's authority.

Legal Effect of Probate:

The grant of probate is conclusive evidence of the genuineness of the will. Without probate, the executor / executrix cannot lawfully distribute the deceased's estate, particularly in cases involving immovable property.

[3] If immovable property is situate outside territory or if the deceased had multiple immovable properties, then there may be additional requirements.

Procedure for Obtaining Letters of Administration with Will:

Where a deceased has left a will but no executor is named, or the named executor is unable or unwilling to act, the Court can issue Letters of Administration with Will annexed. This document grants authority to an administrator (appointed by the Court) to act in the place of an executor in administering the estate according to the terms of the will.

Application:

Any interested party, typically a beneficiary or legal heir, can apply for Letters of Administration.

Contents of the Petition

1. Details of the deceased (date of death, residence)
2. Full and exact copy of the Will
3. Description of the assets
4. Name and addresses of the Legal heirs

Notice:

The process of issuing a public notice and allowing objections (caveat) is followed.

Grant:

The Court, after examining the will and the qualifications of the proposed administrator, issues the Letters of Administration with Will.

Legal Effect:

The Letters of Administration with Will confer authority on the appointed administrator to administer the estate according to the will's provisions. Like probate, it is conclusive evidence of the right to administer the estate, particularly for transferring immovable property.

Letters of Administration without Will (Intestate Succession):

When a person dies intestate (i.e., without leaving a will), the estate is distributed according to the rules of intestate succession as prescribed under the Act. In such cases, the legal heirs must obtain Letters of Administration without Will to administer and distribute the estate.

Application:
Any legal heir of the deceased may apply for Letters of Administration

Contents of the Petition

1. Details of the deceased (date of death, residence)
2. Description of the assets
3. Name and addresses of the Legal heirs
4. Administrative Bond

Public Notice:
A notice is published, allowing objections or caveats to be raised.

Hearing:
If no caveat is filed, the court issues the Letters of Administration. If objections arise, the matter proceeds to trial.

Legal Effect:

The grant of Letters of Administration without Will allows the legal heirs to distribute the estate among themselves in accordance with the law of intestate succession. It is required for the legal transfer of immovable property and bank accounts.

Succession Certificate:

A Succession Certificate is distinct from probate or letters of administration and is to be obtained essentially when the property of the deceased is movable property, such as debts and securities (e.g., bank accounts, shares, fixed deposits).

The Succession Certificate serves as a legal document that grants the rightful heirs or beneficiaries the authority to collect debts or securities owed to the deceased. It also provides authority to the debtors or institutions that release the funds in favour of legal heirs.

Application:
Filing of Petition by an heir or interested person with the competent court

Contents of the Petition

1. Details about the deceased.
2. The nature of the debts or securities to be collected.
3. The relationship of the petitioner to the deceased.

Public Notice:

The Court issues a public notice to invite objections from other interested parties or heirs

If objections are received then necessary steps should be taken by applicant to comply with the objections.

If no objections are raised, the Court grants the Succession Certificate

Legal Effect:

The Succession Certificate grants the petitioner the right to collect and manage the debts or securities of the deceased. It does not cover rights to immovable property, nor does it confer ownership of the estate, but it is critical for the legal transfer of movable property.

**Conclusion:**

In the Bombay/Maharashtra jurisdiction, several legal instruments are employed for estate administration, each tailored to different scenarios of succession. Probate is necessary when a person dies leaving behind a will, and it serves as a legal validation of that will, enabling the named executor to administer the estate according to its terms.

If there is a will but no executor, or if the executor is unable or unwilling to act, then Letters of Administration with Will are required to authorize someone else, usually a legal heir, to manage the estate.

In cases where the deceased dies intestate (without leaving a will), Letters of Administration without Will must be obtained by the legal heirs, granting them the authority to distribute the estate in accordance with the applicable inheritance laws.

Another important legal instrument is the Succession Certificate, which is primarily used for the collection of debts and securities (movable assets) of the deceased.

It is required whether the deceased had a will or died intestate, and it provides a legal mechanism to ensure that these assets are appropriately transferred to the rightful beneficiaries. Each of these instruments serves a specific purpose within the overall framework of estate administration, ensuring that the assets of the deceased are properly managed and distributed according to either the will or the rules of intestate succession. The procedure for filing these testamentary petitions includes court fees of Rs. 75,000/- for property valued above Rs. 11,00,000/-.

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