

Frequently Asked Questions - Probate will

Q1. What is meant by Probate of a Will?

Ans:- According to Section 2 of the Indian Succession Act, 1925, Probate means "the copy of a Will certified under the seal of a court of competent jurisdiction with a grant of administration of the estate of the testator". It is nothing but a decree passed by a competent court declaring the legality/correctness and genuineness of the Will of the deceased.

Q2. Is it necessary to Probate a Will?

Ans:- Under Section 219 of the Indian Succession Act, 1925, if the deceased has died intestate and was not a person belonging to any of the classes referred to in Section 218 (i.e, Hindu, Mohammedan, Buddhist, Sikh or Jain or an exempted person), those who are connected with him either by marriage or by consanguinity are entitled to obtain Letters of Administration of his estate and effects in the order and according to the rules framed in this section.

Under Section 212(2) of the Indian Succession Act, 1925, Hindus, Muslims, etc. are not bound to apply for letters of administration (Probate). It is optional and not mandatory for these persons to seek probate of the Will.

Q3. What are the advantages of a Probated Will?

Ans:- Probate of a Will when granted, establishes the genuineness of Will from the death of the testator and renders valid all intermediate acts of the Executor as such.

Q4. What will be the legal consequences if the Will is not Probated?

Ans:- If the Will which is required to be probated, under the Act, if not probated, has no legal sanctity and binding force.

Q5. What is the time frame within which a Will is to be Probated?

Ans:- There is no limitation for grant of letters of administration or probate. Where the estate is in the possession of administrator there is no question of the Probate Court delivering the possession to him but the probate will be decisive only with regard to the genuineness of the Will propounded and the right of the executor to represent the estate.

Q6. Which is the appropriate Court to file the suit for the Probate of a Will?

Ans:- Principal Court of Original Jurisdiction as per the local City Civil Court Act. The High Court also enjoys concurrent jurisdiction to grant probate of the Will.

Q7. Who can apply for the Probate of a Will?

Ans:- According to Section 222 of the Indian Succession Act, 1926, Probate shall be granted only to an Executor appointed by the Will. The appointment may be expressed or by necessary implication. In the absence of the Executor being named in the Will, the Legatees or the Beneficiaries under the Will could also seek probate of the Will.

Q8. What are the documents to be submitted for obtaining the Probate?

Ans:- Following must be submitted:-

Original Will of the deceased.

Title Deeds pertaining to the immovable property mentioned in the Will, if any.

Documents pertaining to the movables, mentioned in the Will, if any.

Q9. What is the fee payable for a Probate?

Ans:- Uttar Pradesh Court Fees Rules,1973 as applicable in Uttarakhand has several parameters for levy of court fees on probate application and the same is exhaustive.

Q10. What is the procedure for obtaining a Probate?

Ans:- A petition has to be filed before the Principal Court of Original Jurisdiction or before the Hon'ble High Court under Section 374 of the Indian Succession Act. The Court in question will issue the court notices at the initial stage and a paper publication will be caused besides a Gazette publication as well. In case such a petition is contested, it will be converted into a regular suit and upon contest the same will be disposed of, by delivering the judgment and decree, in accordance with law.