

Estate planning: safety net for wealth

LEGAL ANGLE

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The most under-appreciated, yet critical, aspect of wealth management is estate planning. It extends the scope of wealth management far beyond wealth creation by planning the protection, preservation and succession of one's wealth. Yet, most wealth managers, conveniently enough, ignore it, perhaps because of the scarcity of expertise in that domain as well as low (or lack of) customer awareness.

The real issue is that most of us are content with generating "good returns" not realizing that planning the safety and distribution of wealth is as important as, if not more so than, its creation. If the future has anything in store for us, it is definitely uncertainty. Therefore, we arrive at the savvy conclusion that estate planning holds an equally important place in a wealth management strategy. It's like a safety net woven around our hard-earned, strategically created wealth. Though much goes into estate planning, the primary tools for its facilitation are private trusts and Wills. To appreciate the importance of these tools, however, we require a proper grasp of their purpose.

Need for private trusts

In creating a private trust, we essentially set a portion of our wealth aside to ensure that our near and dear ones benefit when the going gets tough. This could mean a business crisis, untimely death, family unrest, unanticipated health problems and many other unforeseen events. For example, a business hit by an unexpected mishap puts your personal wealth into the grave danger of encumbrance. In such times, a trust can protect your wealth by "ring-fencing" your assets and preventing a crisis from affecting your family's lifestyle.

Similarly, family disputes may not always be anticipated and family businesses are highly susceptible to family turbulence. In the past, several giant businesses have fallen victim to family disputes. While some have survived the storms due to the timely creation of trusts, others have had not-so-happy endings. The past is not short of examples showing that even seemingly close-knit families may be struck by an unfortunate turn of events, jeopardizing the family wealth and its distribution to future generations. A trust can be utilized to contain these situations and maintain goodwill and harmony in the family as well as the business across generations.

In essence, a private trust is an entity created under the Indian Trusts Act, 1882, that safeguards assets for the benefit of a select set of individuals or beneficiaries. A trust is expected to meet certain objectives over its lifetime

and trustees are appointed to ensure that those objectives are met. Ideally, the best time to create a trust is when the going is good, not in times of desperation or in anticipation of a disaster in the near future.

Apart from those mentioned above, several other benefits accrue to a private trust. For example, it can prove very helpful when one wishes to safeguard the interests of a child with special needs. In such cases, the trust acts as a "virtual parent" and addresses the monetary requirements of such a child. Similarly, as we age, we may run the risk of falling short of people to take care of us; hence, a trust can function like a "virtual caretaker". A private trust is also a highly beneficial medium for non-resident Indians (NRIs) to preserve and invest their money in India smoothly and efficiently.

Role of a Will

A trust can hold and care for a portion of our wealth; yet, it is important to attend to the wealth lying outside the trust as well. Here is where a Will plays a significant role. A Will is a document expressing "the wishes" of a person with regard to the distribution of one's wealth when one has passed away. It signifies in a clear and unequivocal manner the "Will-ingness" of a person to bequeath one's assets according to one's desires. A Will becomes effective only after a person's death.

In creating a Will, clearly defining assets is vital, so is having clarity about what one desires to give to whom. It is a good practice to register a Will and periodically rethink it.

Unlike a trust, a Will is not a separate legal entity, but only "an expression of desire". Nevertheless, it is imperative; its absence is likely to trigger disputes concerning the distribution of the deceased's wealth. For example, sibling rivalry could return while claiming a deceased parent's wealth. Moreover, distant relatives may also return to claim a share in such wealth. Hence, it is truly prudent to draw up a soundly drafted Will, devoid of ambiguity.

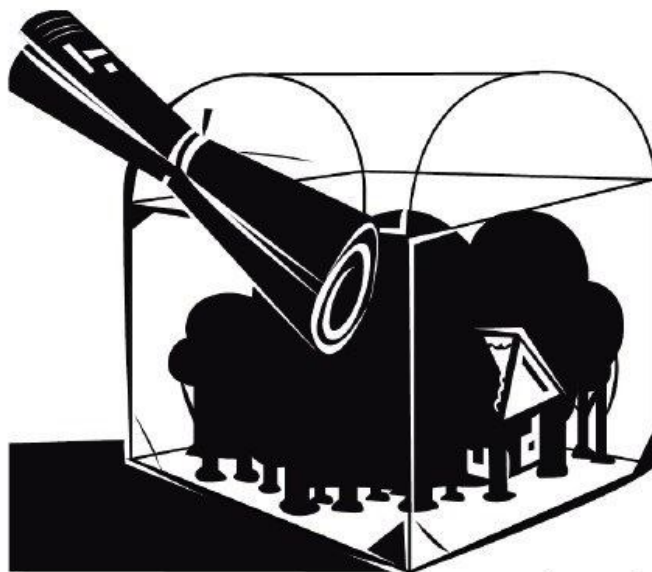
A private trust may not be for everyone; one would need to identify whether the situation calls for one on a "need-to-have" or a "nice-to-have" basis. But a Will is essential for any person with positive net worth. Nevertheless, private trusts and Wills go hand-in-hand. The absence of either can jeopardize both

the security and the distribution of wealth. Therefore, it is essential for the objectives of the Will be aligned with those of the trust.

Need of the hour

Despite the clear legal benefits, the tendency persists of ignoring or deferring estate planning. One's haziness about how to go about it renders it even more important to place the responsibility for estate planning in skilled hands, who could then give it the attention and consideration it deserves. It is imperative for wealth managers to ensure that their customers' wealth is wisely and holistically managed.

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