

Here's a guide to legacy transfer

Money Plant: Legacy planning should begin early to build wealth, writes B Krishna Mohan

P2

Plan legacy transfer early, it's well within your rights

What can be spent and what can be contested depends on whether the wealth is self-earned or inherited

MONEY PLANT

B KRISHNA MOHAN

At his age, many would have wanted to retire. Ananya mostly to meet medical needs. But Harana Sharma, a senior citizen residing to Miramboli station, Bengaluru, did the unexpected with the Rs 25 lakh prize money he won in a television show last month. He made a fixed deposit of Rs 10 lakh each in favour of National Association for Blind and Sri Vidya Centre for Mentally Handicapped Persons. He also expressed his gratitude for a woman who helped him during difficult times by making a Rs five lakh fixed deposit in her favour. He continues to live on the pension he has been getting.

Legacy transfer is within Harana's rights — to spend or give away all his self-earned wealth in the way he deems right. Legacy planning, experts say, should begin early to build wealth that can be clearly identified and passed on to the beneficiaries.

Cash, bank deposits, mutual funds, insurance products, pension funds, movable and immovable properties, among others, form a part of the legacy transfer.

However, what can be spent, given as donations, and what can be contested by legal heirs will be defined by whether the wealth is self-earned or inherited.

Self-earned and inherited wealth: According to Hindu Succession Act, 1956, the Hindu Succession Act, 1956, that comes into play. Further, laws of inheritance for Muslims will be as per the sect they belong.

amount of wealth and transfer it for one or more generations. The estate should be specifically identifiable. Generally, the challenge is with immovable properties and buildings.

In case of self-earned property, people have the right to spend it the way they want — give to beneficiaries of their choice or even make donations. A simple will outlining the wealth and beneficiaries is enough. The legal heirs cannot contest the decision. In the case of ancestral property, it has to be shared with legal heirs in proportions they are entitled. Various succession laws define the hierarchy.

Will is key: The legacy transfer, whether self-earned or inherited, begins with the will, which lists the wealth — cash, mutual funds, insurance, movable and immovable property and others. It identifies the beneficiaries. If proper arrangements are not made, it becomes turmoil for the beneficiaries to claim it, he says.

Wills are popular and have been executed for many years now. Many people are organised in this manner. The family itself can execute the will at the person who is making the will can nominate a person as the executor of the will. It is better to get the will registered. However, it is not mandatory. It need not be even on a stamp paper, explains Chetani.

No income tax implications for ancestral property: If it is ancestral property, heirs get the rights by birth, depending on the religion they belong to. The property can be passed on by re-generation, by way of family settlement or a division in case of a HUF. In case if somebody wants to gift his



or her share from the ancestral property, it is his or her self-earned property.

Other channels: Trusts can be created for any purpose and the beneficiary need not be a family member. Trusts can be created for the benefit of family members, for charitable purposes, or for the benefit of the persons who are not part of donors or the founder's family. They can be for the benefit of anybody. The founder of the trust can manage such trusts or they can be managed by the trustees, who would be

identified and, by the founder of the trust and later on appointed depending on the wishes of the trust.

Donations: Donations can happen, but it has to be self-earned or be the share from the ancestral property as it is as good as self-earned property. The share pattern keeps changing as the family grows, he tells.

Financial products: Some are also seeing a possibility of wealth transfer through pension funds and the life. They buy the pension fund

and the proceeds go to the nominee, who is the beneficiary in most cases.

For instance, IndiaFirst Life Insurance in January announced a guaranteed retirement plan which offered assured growth of nine per cent on the cumulative premium during the initial years and a consistently growing retirement corpus with annual bonuses in the later years. The vesting age is from 40 years till 80 years of age. It is designed to address the needs of people who would want to create an assured pool for retirement. This helps

in buying a pension.

Financial implications:

There will be no income tax implications for property inherited. For example, for a gift — which is an immovable property — there will be no income tax but there will be registration and related charges. For gift deed, the stamp duty could be up to seven per cent, varying whether it is gifted to blood relatives or others.

If one sells something to somebody and if they receive a consideration, the seller might have to pay capital gains tax depending

on the type of asset that is being sold. The tax rate depends upon the asset. For example, listed securities have no tax. For unlisted securities, there is a certain rate for the taxes, depending whether it is a long term or a short-term asset, explains Chetani.

Same is the case of immovable property, again whether it is long-term or short-term. That is one way to pass on self-acquired property.

Succession laws: According to T Mahesh Kumar, partner, Raaj Corporation, the Hindu Succession Act, 1956, is applicable in Hindu, Sikh, Jain and Buddhists for intestate succession/inheritance.

Under the Hindu law, when a male dies without a will, the intestate succession shall be first to preferential heirs. They include mother, widow, daughter son and so on. If there are no preferential heirs, the relatives specified in class II of the schedule will be the heirs. They include father, son's daughter's son, son's daughter's daughter, brother, sister and others. If these are not present, then anyone can make a claim. Agnates are those who trace their relationship through males — brother, brother's son, and others.

Lastly, if there are no agnates, then upon his relatives who are cognates — those who trace their relationship through females — will be eligible. They include sister's sons and daughters, daughter's sons and daughters, mother's parents and so on.

The property of a female who dies intestate goes to the sons or daughters first and then to husband, listing them goes to others, he explains. For Muslims, it is the Muslim

personal law (shariat) application Act, 1937, that comes into play. Further, laws of inheritance for Muslims will be as per the sect they belong.

Unlike Hindu law, Muslim law of inheritance does not recognise the concept of 'right by birth'. Inheritance opens only after the death of a person. No person may be an heir of a living person. (Muslim Succession Laws) Sharia, Christians and Jews are governed by Indian Succession Act, 1925.

Conflict areas: Confusion and conflict are few due to the lack of proper records, clarity on what property is and making sure all the documents relating to that property are there.

The second thing is, in the individuality of the property, like a house being given to children and where it is difficult to divide. In such case, the solution is to sell the property and share the proceeds.

However, in this case the objective of the parent going to the house to children is not met as it is sold and converted into cash, explains Chetani.

Nominee and assignee: While it is mandatory for any financial product to seek a nomination, not many people know the role of a nominee. A nominee can receive the funds and spend them too. But there is a possibility of legal heirs, if any, claiming a share in that. If you assign the policy to someone, it no longer belongs to you. The proceeds in such cases will go to the assignee, and cannot be challenged by anyone, explains RM Vishakha, managing director and chief executive officer, IndiaFirst Life Insurance.

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