



Business

How estate planning plays crucial role in preserving wealth

Experts say it is essential to have a backup mechanism in the form of estate planning to protect and transfer wealth to beneficiaries, thereby preventing disputes.



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NEW DELHI: Divi Dutta, a partner with Khaitan & Co, remembers a case where her client found himself amidst litigations that threatened his financial stability.

The client's wife was involved in a lawsuit concerning the enforcement of a personal guarantee, his daughter was in the middle of divorce proceedings, and his son, who got separated from his wife, was also anticipating divorce proceedings.

The client wanted to protect his assets from these litigations and ensure a succession plan for his children and grandchildren. She resolved his problem by designing a trust.

“Setting up a trust early on helps ring-fence assets from legal risks like divorce or litigation, while still allowing control during one's lifetime.

It also ensures a smooth transition of wealth to future generations, protecting both family stability and business legacy,” says Dutta.

As per Lokesh Shah, Partner with IndusLaw, it is essential that one grows his wealth while at the same time has a backup mechanism in the form of estate planning to preserve his wealth.

“There are numerous instances of successful businessmen setting trust to secure their future. For instance, the Fisher Family Trust, Family Trust.

These instances teach us that the right time for estate planning is ‘now,’” Shah says. With the growing number of start-ups, estate planning has become quite popular among young entrepreneurs.



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ELEMENTS OF ESTATE PLAN

ESTATE PLANNING

It is the process of arranging for the management and distribution of an individual's assets after death. It involves creating legal documents to ensure that a person's wishes regarding the property, finances, and healthcare are honoured.

WHAT IS A WILL?

A will serves as the foundational document that outlines how a person's assets and responsibilities will be handled after death. It allows individuals to specify beneficiaries, appoint guardians for minor children, and designate executors to manage the estate.

TRUST

A trust is a way to manage, protect your assets for someone else's benefit. It is created when you write a document that names a trustee— either an individual or a professional entity—who will handle the assets and ensure they are managed according to your wishes.

ABOUT POA

A power of attorney (POA) is a legal document that allows an individual to authorise another person to make decisions on their behalf. This can include financial, medical, or legal decisions. It ensures that someone you trusted can manage your principal's affairs.



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According to Amit Pathak, Managing Director at Warmond, “Risks and rewards in start-ups are quite high and therefore, promoters are concerned about putting all their eggs in one basket. Many amongst them have set up private trusts to mitigate this risk and safeguard their personal wealth from future business uncertainties.”

Mistakes in succession plan

People generally make the will and forget about it. In situations where a person may have acquired properties after the creation of the will, if the will is not updated the inheritance of such assets may become challenging, says Divi Dutta. Lokesh Shah of IndusLaw also echoed the same.

“Proof of medical fitness of the testator should always be there when the testator is aged and writing the will. This would show that the testator was medically fit and of sound mind when he was drafting the will,” Dutta added.

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are not clearly defined in the 'Trust Deed, the governance of 'Trust becomes difficult. Also, forming a trust is an expensive process, so all costs related to it should be understood in depth beforehand. Even the different tax implications that the Trust could be subject to should be known beforehand, cautions Dutta.

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Common misconceptions

As per Shah of IndusLaw, estate and succession planning are often seen as taking away self-control and giving control to future generations. one of the prominent reasons to undertake estate planning is to have freedom to do as you wish and to give legal authority to your preferences which the intestate rules may not provide for.



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Pathak of Warmond emphasises, "A private trust can be structured in a way that the settlor or entrepreneur retains control over the assets during their lifetime.

Another misconception that some individuals have is that private trusts should only be created by the elderly, which is also incorrect. It is important for people of any age group who have created wealth to preserve it and have a sound succession plan in place."

According to Dutta, one common belief is that succession planning can be done without professional help; however, it is a complex process that requires expert guidance to ensure compliance with legal requirements.

Another misconception is that insurance can replace succession planning. In reality, insurance serves a different purpose—while it indemnifies losses, succession planning is focused on preserving wealth for future generations.

Additionally, some people think that estate planning is solely for tax avoidance. While minimizing tax liabilities can be a benefit, the primary goal

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