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**FREQUENTLY ASKED QUESTIONS
ON
THE REGISTRATION ACT, 1908
(TRAINING MATERIALS)**

Question: What is the purpose of registration of a document of transfer of immovable property?

Answer: (a) The purpose of registration of a document of transfer of immovable property is that after registration, the document of transfer becomes a permanent public record. A public record can be inspected by any person and a certified copy can be obtained from the office of Sub-Registrar.

Registration of a document is a notice to the general public that such immovable property has been transferred by the owner to the buyer. Those persons who are interested in purchasing that immovable property should verify from the records- index available in the office of Sub-Registrar, in whose name the last transfer deed has been registered.

(b) According to section 54 of the Transfer of Property Act, 1882 (4 of 1882) right, title or interest in immovable property can be transferred only by a registered instrument.

Question: What is the effect of non-registration of documents of transfer of immovable property?

Answer: If a deed of transfer of immovable property whose registration is compulsory under section 17 of the Registration Act, 1908 (16 of 1908), is not registered then, it will not be admissible in evidence. (For details, please see Part X, Section 47 to 50 of the Registration Act, 1908)

Question: Whether any person can write deeds and present for registration. Shall that deed be legally accepted?

Answer: Yes. Any person executing an instrument, i.e., seller or buyer can write any instrument of transfer of property.

For his help, the Department of Land Resources has developed and circulated model drafts of (1) sale deed, (2) lease deed, (3) gift deed, (4) mortgage deed, (5) agreement to sell, (6) exchange deed, (7) Power of attorney, (8) Will deed may be customized according to requirement and to be uploaded by States/UTs on their websites. All such instruments shall be admitted by the Sub- Registrars and these instruments will have the same evidentiary value as that of written by licensed deed writers.

However, license of writing deeds has been provided to Deed Writers by State Government under the provisions of the Registration Act, 1908, for this purpose.

Question: Should the seller/buyer be present at the time of registration?

Answer: Yes, seller and buyer or a person claiming to be the owner should be present in the Sub-Registrar office at the time of presentation of a deed so that the Sub-Registrar will verify whether the document has been executed by them. (For details please see Section 32 of the Registration Act, 1908).

Question: After execution (signing by both parties) on the document; is there time limit within which it has to be presented before a Sub-Registrar for registration?

Answer: (a) Yes, four month period is prescribed under section 23 of the Registration Act, 1908 within which a document may be presented for registration before a Sub-Registrar. Time is calculated from the date of execution (signature) of the deed.

(b) If a document is executed out of India, the period of four months will be counted from the date of receipt of that document in India.

(c) After four months document may be presented within another four months to the District Registrar with an application. The District Registrar may impose a penalty up to a maximum of ten times the registration fees and grant permission to Sub-Registrar to register the

document. Such document may be presented before Sub- Registrar within eight months.

(d) After expiry of this period of 08 months, the document cannot be accepted for registration. (For details please see Section 23 and 25 of the Registration Act, 1908).

Question: What are the restrictions on transfer of agricultural lands?

Answer: The following restrictions are prescribed by State Revenue Laws for transfer of agricultural lands- (1) Lands granted to persons belonging to scheduled caste or scheduled tribe or provided by grant cannot be transferred or purchased without prior permission of the State Government. In some States, it has been notified that the above mentioned restriction does not apply to mortgagee in favour of co-operative or scheduled banks and partition among members of the family.

Question: What is a Will?

Answer: A Will is a testamentary document by which a person bequeaths his property to be effective on his death is called a Will. The property will devolve on the person in whose favour it is bequeathed after death of the testator.

Question: Who can execute a Will? Are there any other conditions?

Answer:

- (a) Any person above the age of 18 years and mentally sound may execute Will, but a Will caused by fraud or coercion or by importunately will not be valid and can be examined by a competent civil court. Therefore a Will must be executed voluntarily.
- (b) Parents or guardians cannot execute Will on behalf of minors or lunatic children.
- (c) A Will must be attested by minimum two witnesses is necessary.
- (d) A Scribe (deed writer / advocate) cannot be called witness because they have signed the Will in column of drafted by. Thus, two

independent attesting witnesses other than the scribe are necessary.

(e) Beneficiary under a Will should not sign as attesting witness. In order to avoid disputes in implementation of a Will, description of property and the name of the beneficiaries should be clearly written so that there is no room for doubt.

Question: Is it compulsory to register a Will?

Answer: No. It is not compulsory to register a Will. The testator may register a Will at his option. It is better to register the Will so that if original Will is lost; a certified copy can be obtained from the record in Sub-Registrar Office.

Question: Where can a Will be registered?

Answer: A Will can be registered in the office of any Sub-Registrar within India.

Question: Is there any time limit to register a Will?

Answer: No. There is no time limit as such to register a Will from the date of its execution.

Question: Can a Will be cancelled?

Answer: A testator can cancel his Will at any time during his life time.

Question: Can a registered will be rectified or changed?

Answer: If the executant of a Will wishes to rectify, amend a Will, he may do so during his lifetime. Such a document is called a Codicil.

Question: Can a Will be registered after the death of the testator?

Answer: Yes, a Will can be registered after the death of the testator. The Party claiming under the Will shall have to produce the original Will along with record relating to the death of the testator, the witnesses and the document writer before the Sub- Registrar for examination about the execution of the Will. If the Sub Registrar is satisfied that the Will has been executed by that person and the person is genuine, he will register it. (For details, please see Chapter VIII Section 40 and 41 of the Registration Act, 1908)

Question: What is the stamp duty and registration fees for registration of a Will?

Answer: No stamp duty is chargeable on registration of a Will deed. For registration of Will during the life time of the testator, State Government has notified the registration fees under section 78 of the Registration Act, 1908.

Question: Is the certified copy of a registered Will available to any person?

Answer: A certified copy of a registered Will is available to the testator during his lifetime. After his death of the testator, any person can obtain a certified copy of the Will by producing a proof of death of the testator.

Question: When does a General Power of Attorney gets cancelled?

Answer: A General Power of Attorney may be cancelled in the following two methods-

- (a) General Power of Attorney automatically gets cancelled on the death of executants/first party
- (b) Principal (Executant /first party) may cancel the General Power of Attorney at any time.

Question: Does property get transferred by getting a General Power of Attorney from the person selling it? Can the agent become owner of property?

Answer: No. It is wrong to say that ownership is transferred by getting General Power of Attorney. Persons purchasing property must get the sale deed of that immovable property registered in his name. This principle applies to other kinds of documents of transfer of immovable property also. An agent cannot become the owner of the property.

Question: How is ownership of immovable property acquired by a person?

Answer: A person may acquire title and ownership to an immovable property by any of the following modes-

- (1) (i) by inheritance of ancestral property,
 - (ii) through a Will,
 - (iii) acquisition by oneself such as sale etc. or
 - (iv) through gift, trust, settlement, etc. of immovable property in his favour,
 - (v) Grant, sanad / Inam by the Government in his favour,
 - (vi) Through decree of Court in his favour.

(2) There are two ways of acquisition: -

- (i) By act of parties. Example: Sale, gift, lease, settlement, exchange, etc.
- (ii) By operation of law example: Inheritance, decree of Court etc. [(For details please see the Transfer of Property Act, 1882 (4 of 1882)]

Question: 'Non-encumbrance certificates' (NEC) are not being issued in time and the staff also does not respond properly to request of applicants.

Answer: A non-encumbrance certificate is issued after examination of entries in index for 12 to 15 years about that property. From this period of 12/15 years, the period for which the States have Index in softcopy can be searched immediately. For the remaining period, for which entries in Index have been done manually, the index has to be searched manually. This process takes time.

Under the National Land Records Modernisation Programme (NLRMP), States have been provided 25% Central assistance for completion of index in softcopy of the previous twelve years.

It is also noticed that in some offices, having heavy registration work load, the staff may not be able to complete all the search applications and making EC on the same day. In such cases, the ordinary EC should be returned at the earliest possible time, but not later than 3 working days.

Question: There have been cases of impersonation of the seller in the past. What are the measures contemplated by the Department to prevent such practices?

Answer: It is the top priority of the Government to curb impersonation of the seller. The Sub-Registrars have been asked to satisfy themselves about the identity of executants, yet some persons manage to escape from the eyes of the Sub-Registrar. Therefore, the following measure have been taken by the State Governments to prevent impersonation;-

On the document of transfer of immovable property-

- (i) Photographs of the seller/buyer are affixed
- (ii) Finger prints of executants and witnesses are obtained
- (iii) For power of attorney even witnesses have to produce photo and ID card.

If any document is registered by impersonation the real person can take a certified copy of the document from the Sub-Registrar office and file a suit in the concerned civil court for annulment of deed of transfer of immovable property.

Question: How can a person resident outside India acquire and Transfer of Immovable Property in India?

Answer:

(1) Acquisition of immovable property in India by persons resident outside India (foreign national) is regulated in terms of section 6 (3) (i) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) as well as by the regulations contained in the Notification No. FEMA 21/2000-RB dated May 3, 2000, as amended from time to time. Section 2 (v) and Section 2 (w) of FEMA, 1999 defines 'person resident in India' and a 'person resident outside India', respectively. Person resident outside India is categorized as Non- Resident Indian (NRI) or a foreign national of Indian Origin (PIO) or a foreign national of non-Indian origin. The Reserve Bank does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is

on an individual to prove his / her residential status, if questioned by any authority.

A person resident in India who is not a citizen of India is also covered by the relevant Notifications.

(2) In terms of the provisions of Section 6(5) of the Foreign Exchange Management Act, 1999 (FEMA), a person resident outside India can hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was a resident in India or inherited from a person who was a resident in India.

(3) The regulations under Notification No. FEMA 21/2000-RB dated May 3, 2000, as amended from time to time, permit a NRI or a PIO to acquire immovable property in India, other than agricultural land or, plantation property or farm house. Further, foreign companies who have been permitted to open a Branch or Project Office in India are also allowed to acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. Such dispensation is however not available to entities which are permitted to open liaison offices in India.

(4) The restrictions on acquiring immovable property in India by a person resident outside India would not apply where the immovable property is proposed to be acquired by way of a lease for a period not exceeding five years or where a person is deemed to be resident in India.

(5) In order to be deemed to be a person resident in India, from FEMA angle, the person would need to comply with the provisions of Section 2(v) of (FEMA) the Foreign Exchange Management Act, 1999.